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United States Court of Appeals

For the Fourth Circuit

No. 7552

ROSALIND SLADE,
Appellant,

v.

SCHOOL BOARD OF HARFORD COUNTY,
Appellee.

BRIEF AND APPENDIX FOR APPELLANT

FILED
DEC 4 - 1957
R. M. F. WILLIAMS, JR
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Question Presented

Whether appellants were denied rights secured by the Fourteenth Amendment when the court below permitted appellees' school system to defer desegregation of certain schools and grades for one to three years and prolong high school desegregation until 1963 on a "stair step" basis (except for Negro students who might be admitted immediately upon passage of special examinations) where appellees did not sustain the burden of demonstrating the necessity for such delay?

Statement

This cause commenced with an earlier (separate) action. See 146 F. Supp. 91, brought on behalf of some of the appellants here to desegregate the schools in Harford County. Two da s before that cause came to trial appellees adopted a resolution stating that

> "any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools, effective for the school year beginning September, 1956." 146 F. Supp. at p. 93.

Counsel for the Board asserted that "Since that plan embraces the relief prayed for, I think that takes care of that . . ." *Id.* at p. 94. Relying on the Resolution, appellants agreed to dismiss the action, and believed the controversy concluded. *Ibid.* (The court concurred in their interpretation and later, in a fresh suit (the instant one) to require desegregation of the county's schools, wrote that "plaintiffs were justified in believing, as I did, that applications for transfer would be considered without regard to the race of the applicant." 152 F. Supp. at p. 119. The Court therefore held appellees estopped to prevent admission without regard to race of individual named plaintiffs in the first suit. *Id.* at 119-120. The estoppel phase of the suit is not at issue here and is set forth as background.)

On June 6, 1956 the Board announced its "Transfer Policy." It reserved "the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason." 146 F. Supp. at p. 94.

On August 1, 1956 it adopted a "Desegregation Policy." Citing studies which allegedly indicated "lowering of

school standards" upon desegregation and experience of other areas with "bitter local opposition" which prevents "orderly transition . . . and also adversely affects the whole educational program." 146 F. Supp at p. 95, the Board announced that it would only permit Negro applicants for transfer to attend the first three grades of two elementary schools in the county. *Id.* at p. 95. The reason for selection of these schools was that they were, with some slight exception, allegedly "the only elementary buildings in which space is available for additional pupils at the present time." The Board relied, too, on "[s]ocial problems posed by the desegregation of schools. . . ." These, it opined "can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program," it concluded "depends upon the success of these initial steps." *Ibid.*

Altogether sixty Negro children had applied for transfer under the impression that no racial distinctions were to be made. There were, at the time, about 1,400 Negro and 12,600 white children in the school population. Of the sixty applicants fifteen were admitted and forty-five rejected pursuant to the "Desegregation Policy" (App. pp. 26a-27a).

Appellants, therefore, on August 28, 1956, filed a fresh suit alleging that defendants were under constitutional duty to desegregate completely and that they were estopped from retreating from their original resolution. (The Court found an estoppel as to named plaintiffs, but held that the County policy, generally, could not be fixed by estoppel. Applicants here urge only their constitutional position.) The trial court remitted appellants to an administrative remedy before the State Board of Education.

The appellants (including intervenors who were granted leave to intervene, 152 F. Supp. at p. 115) filed an appeal with the State Board. While it was pending appellees

changed their policy once more on February 6, 1957. The new policy provided that:

> Applications for transfer will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom. 152 F. Supp. at p. 116.

Under the then newest plain five elementary schools and the sixth grade in two schools were opened. *Ibid.*

The State Board held that the plan had been adopted in good faith and constituted a reasonable start. *Ibid.*

At a hearing of this cause on April 18, 1957 the plan of February 6 was amplified to include ten elementary schools and the sixth grade in one school; as well as three elementary schools as of September 1958, when contemplated construction was projected to be completed. Three elementary schools and the sixth grade of a high school would commence receiving Negroes' applications in September 1959.

As a normal result of the plan, the Board observed, sixth grade graduates would have been "admitted to junior high schools for the first time in September, 1958 and would proceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963." 152 F. Supp. at p. 117.

At the April, 1957 hearing, the Court ruled tentatively that the plan was "generally satisfactory for the elementary grades but not for the high school grades." *Ibid.*

Another hearing was scheduled for June 11, 1957. On June 5th, the Board changed its plan once more and notified the parties of the change just before the hearing. (App. p. 39a). The new plan—consisting of additions to

the old—would permit Negro children to enter high school by a route additional to that of the earlier plan (whereby they could enter only through normal promotions from desegregated elementary schools). It would permit Negro children to take special examinations and be specially evaluated for admission to nonsegregated high schools, 152 F. Supp. at 117; white children, and Negro children entering via the high school plan designed to evolve during 1958-1963, would not be required to take these tests. Under the revised plan complete desegregation of the seventh grade, however, was still deferred until September, 1958. 152 F. Supp. at 119.

The reason given for the scheme of desegregating the high schools over a period of four years in conjunction with the right of specially qualified Negro applicants to enter starting immediately, as summarized by the Court, was:

> . . . when a child transfers to a high school from another high school he faces certain problems which do not arise when he enters the seventh grade, which is the lowest grade in the Harford County high schools. After a year or so in the high schools social groups, athletic groups and subject-interest groups have begun to crystallize, friendships and attachments have been made, cliques have begun to develop. A child transferring to the school from another high school does not have the support of a group which whom he has passed through elementary school. A Negro child transferring to an upper grade at this time would not have the benefit of older brothers, sisters or cousins already in the school, or parents, relatives or friends who have been active in the P. T. A. High school teachers generally, with notable exceptions, are less 'pupil conscious' and more 'subject conscious' than teachers trained for elementary grades, and because each teacher has the class for only one or two subjects, are less likely to help in the readjustment. 152 F. Supp. at p. 118.

The pertinent parts of the plan of the school board, viewed as a whole, as of the last hearing, and as embodied

in the Court's order from which plaintiffs appeal, are now as follows:

> 1. Defendants now and hereafter shall accept applications for admission or transfer to all elementary classes under their control (except in the schools named in paragraph 2 as to which applications will be accepted as described in that paragraph), in accordance with rules and regulations set forth in paragraph 3 and every Negro child's application to classes governed by the instant paragraph shall be considered and granted on the basis upon which it would be considered and granted if he were white.
>
> 2. Defendants shall accept Negro children's applications for admission or transfer to Old Post Road, Bel Air and Highland elementary schools for the school year 1958-1959 and thereafter; and shall accept Negro children's applications for admission or transfer to Forest Hill, Jarrettsville and Dublin elementary schools and the sixth grade at Edgewood High School for the school year 1959-1960 and thereafter. Every Negro child's application to the schools named in this paragraph for the respective school years specified herein and thereafter shall be considered and granted on the basis upon which it would be considered and granted if he were white.
>
> 3. All applications for transfer to elementary classes shall be made during the month of May on a regular application form furnished by the Board of Education and must be approved by the applicant's classroom teacher and the principal of the school the applicant attends. Such applications will be reviewed at the regular June meeting of the Board of Education. Applicants and their parents will be informed of the action taken on applications prior to the close of school in June of each year. In no event shall a Negro child's application for admission or transfer be rejected if it would have been granted had he been white.
>
> 4. A Negro child's application for admission or transfer to seventh grade classes commencing Sep-

tember, 1958, and thereafter, under defendant's control shall be considered and granted on the basis upon which it would be considered and granted if he were white. Such applications to the following classes shall be so treated during and after the year set forth alongside the class, as follows:

eighth grade	— 1959
ninth grade	— 1960
tenth grade	— 1961
eleventh grade	— 1962
twelfth grade	— 1963

In 1963 and therafter all Negro applicants to all classes shall be admitted on the same basis upon which they would be admitted if they were white.

5. Commencing September, 1957 applications for admission or transfer by Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendants' control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. These qualifications will be measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools. Apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4 no racial distinction is to be made in the administration of these tests and evaluations. Such applications may be made to the Board of Education between July 1 and July 14 of 1957 and years following in which these tests may be given.

• • •

7. No racial distinctions whatsoever shall be made by defendants in treating Negro children who have been admitted to schools pursuant to this decree. (App. 1a-3a)

• • •

The record reveals that problems of overcrowding, pupil adjustment, etc., would not stand in the way of free transfer for white children who had never attended the Harford County schools before and who moved into the county:

> "Q. (By Mr. Greenberg) If white persons moved from Delaware or Virginia or elsewhere, moved into Harford County, that is at the present time, such as to work in an industrial plant, would their children be admitted to the schools at the present time?
>
> A. (By Mr. Willis, Superintendent of Schools) Yes, sir, they would." (App. p. 29a)

See also App. 28a.

Moreover, whatever may be said of overcrowding it was not so severe that the Subcommittee on Facilities of appellees' Citizens Consultant Committee on Integration could not conclude: "the committee is of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-57." (Plaintiffs' Exhibit 1-a, App. p. 44a)

The record further shows that deferring desegregation of the seventh grade is without even purported justification:

> "The Court: Why can't you admit a child to the seventh grade in 1957?
>
> "The Witness: (Mr. Willis) I can't say why, your Honor, but the policy was moving forward three years, and that was all." (App. pp. 35a-36a)
>
> * * *
>
> "The Court: It is a policy reason and there is no administrative reason why you say the seventh grade in 1958 and not the eighth grade also, that it is only policy reasons.
>
> "The Witness (Mr. Willis): The only extension of the policy that has been accepted for the reasons that have been given.
>
> "The Court: And no administrative reasons?
>
> "The Witness: Well, I won't say none, but at the moment I don't think of any big one, let's put it that way." (App. pp. 36a-37a)

The Board's plans were based not only on the alleged considerations set forth above, but on apprehension that proceeding otherwise might provoke public demonstrations or opposition like some which occurred in Delaware and elsewhere. (App. pp. 30a, 37a, see 146 F. Supp. at p. 95.)

Argument

Brown v. *Board of Education*, 349 U. S. 294 sets forth the only standards concerning what constitutes "deliberate speed": (a) "plaintiffs' . . . admission to public schools as soon as practicable on a nondiscriminatory basis"; and (b) that "[t]he burden rests upon the defendant to establish that such [additional] time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date." 349 U. S. at p. 300. While the need to solve administrative problems may be occasion for delay, and plans in the first instance are to be formulated by school boards, "the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." *Ibid.*

The second *Brown* opinion has been considered by District Courts and Courts of Appeals on a number of occasions. In this Circuit, district courts have ordered complete desegregation by the next school year or term in Charlottesville,[1] Arlington,[2] Newport News[3] and Norfolk,[4] where local school officials had taken no steps whatever towards desegregation, and, this Court has affirmed. Moreover, in a series of West Virginia District Court cases in this Circuit involving plans, overcrowding, fiscal problems, and time for consideration, have been rejected as grounds for delay when it was clear that Negro children

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[1] *School Board of the City of Charlottesville* v. *Allen*, 240 F. 2d 59 (4th Cir., 1957); cert. den. 353 U. S. 910.

[2] *Ibid.*

[3] *School Board of the City of Newport News* v. *Atkins*, 246 F. 2d 325 (C. A. 4th, 1957); cert. den. — U. S. —

[4] *Ibid.*

could be admitted notwithstanding the proferred reasons for deferment. *Shedd* v. *Board of Education of County of Logan*, 1 R. Rel. L. Rep 521 (S. D. W. Va. 1956); *Dunn* v. *Board of Education of Greenbrier*, 1 R. Rel. L. Rep. 319 (S. D. W. Va. 1956); *Taylor* v. *Board of Education of County of Raleigh*, 1 Rel. L. Rep. 321 (S. D. W. Va. 1956); *Pierce* v. *Board of Education of Cabell County* (S. D. W. Va. 1956, unreported). These cases have treated overcrowding not as a racial problem but as a spatial one. If there were to be a shortage of space, admissions could be conditioned on room being available—*but not on a racial basis as appellees have done.*

(Of course, such decisions did not outlaw the application of normal transfer criteria. But, in this case, the Negro children barred by the Harford plan may not use normal transfer procedure.)

Other jurisdictions which have reviewed plans divide into two principal categories: on the one hand, cases involving plans of districts in Kentucky, Ohio and the state colleges of Tennessee; on the other, plans involving schools in Arkansas and Nashville. The first group of cases has uniformly rejected delay based upon overcrowding, fiscal problems, transportation difficulties and other administrative considerations where it could not be shown that these actually were a bar to admitting Negro applicants.

In other words, the courts held that it was not enough that problems existed; they could not defer desegregation unless the burden of showing why time was required could be met. In *Willis* v. *Walker*, 136 F. Supp. 177 (W. D. Ky., 1955) the court pointed out that "no white children either before or after the application for admission of the plaintiffs, were denied admission" and that "good faith alone is not the test. There must be 'compliance at the earliest

practicable date.' " 136 F. Supp. at p. 181. Desegregation was ordered by the next school year.[5]

Moreover in *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir., 1956) cert. denied 350 U. S. 1006, the Court of Appeals held that where as here, white children were not rejected during alleged overcrowding desegregation could not be delayed for that reason. See also *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir., 1957) cert. den. 1 L. Ed. 2d 915 reaffirming that race may not be used as a standard to deal with crowded conditions.

The second group of cases has approved plans running into perhaps six years on the basis of a recital of problems in school administration. But there has been no effort by appellees in the instant case to catalogue in detail as problems in Harford County the list of avowed reasons for delay proffered in *Aaron* v. *Cooper*, 243 F. 2d 361 (C. A. 8th, 1957) one of the cases justifying delay:

> Foremost among the problems of the Little Rock School District are those of finances, structural organization, enrollment, and the selection and training of an adequate staff. These problems are not new, but they will be greatly accentuated by integration. By its plan the School Board is seeking to integrate its schools and at the same time maintain or improve the quality of education available at these schools. Some of its objectives are to provide the best possible education that is economically feasible, to consider each child in the light of his individual ability and achievement, to foster sound promotion

[5] See also *Gordon* v. *Collins*, 2 R. Rel. L. Rep. 304 (W. D. Ky. 1957) (court rejecting alleged reasons for delay which included overcrowding, transportation difficulties, reallocation problems, need for time to study the problems, unfavorable social conditions; the position of defendants is unreported); *Mitchell* v. *Pollock*, 2 R. Rel. L. Rep. 305 (W. D. Ky., 1957) (rejecting similar grounds for delay), and see, for the same considerations and holding *Garnett* v. *Oakley*, 2 R. Rel. L. Rep. 303 (W. D. Ky., 1957).

> policies, to provide necessary flexibility in the school curriculum from one attendance area to another, to select, procure, and train an adequate school staff, to provide necessary in-service training for the school staff, to provide a necessary educational program for deviates (mentally retarded, physically handicapped, speech correction, etc.), to provide the opportunity for children to attend school in the attendance area where they reside, to foster sound administrative practices, to maintain extra-curricular activities, to attempt to provide information necessary for public understanding, acceptance and support, and to provide a "teachable' group of children for each teacher. With regard to the later objective, it is the policy of the Board to group children with enough homogeneity for efficient planning and classroom management. 143 F. Supp. at p. 860.[6]

Appellants submit that the alleged impedimenta profferred by appellees for delay herein have not only been rejected in the largest number of cases where considerd by the courts, but in those cases where reasons for delay have been held sufficient the barriers have surpassed in complexity those advanced here.

The appellees are not in the dark as to how many Negro applicants they may expect: about 60 in a school system of 14,000 children; at least 15 of these already have been admitted.

Their argument about overcrowding becomes meaningless in view of this small number, when at the same time they concede that comparable white children transferring

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[6] The Nashville (*Kelley* v. *Board of Education of the City of Nashville*), 2 R. Rel. L. Rep. 21 (M. D. Tenn. 1957) delay was found to have been justified by "numerous administrative problems, including increased difficulty in procuring and retaining teachers, teaching adjustments required because of differences in achievement levels of students among Negro and white children, problems arising from a liberalized student transfer system supplanting a strict transfer system, as well as other problems . . ."

from out of the jurisdiction will be admitted. As to deferring desegregation of the seventh grade they are at a loss even to advance a reason. With respect to the high schools they urge only that high school work is so alien from earlier educational experience that Negroes must be introduced a few at a time so that there will be others with whom they can associate. But white children too meet novel situations in high school, and it defies experience to deny that Negro children will make friends with their white classmates.

The chief administrative problem that appellees have experienced has been the formulation and reformulation of so many plans. The clear inference from the record has been that the sole reason for delay has been reluctance to admit Negro children, not difficulties recognized by the Supreme Court's decision. Indeed appellees have stated on a number of occasions that they have put off desegregation because of fear of opposition. But compare, *Jackson* v. *Rawdon*, 235 F. 2d 93 (5th Cir. 1956), cert. den. 352 U. S. 925. While one may not view lightly the attitudinal conflict that may accompany revision of school procedures to comply with the Fourteenth Amendment, still the law has recognized some and rejected other grounds for delay. It does not recognize reluctance or social difficulties. Moreover, as Professor Charles Black, probably the most perceptive commentator on the subject has demonstrated, submitting to community opposition does not create the acquiescence that purports to justify deferring or denying the rights of rejected Negro children pending the delay. Black, Paths to Desegregation, New Republic, October 21, 1957, p. 10.

WHEREFORE it is respectfully submitted that the judgment below be reversed and appellees be required to cease

denying appellants their constitutional rights by the beginning of the next school term.

Respectfully submitted,

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APPENDIX

Judgment

This cause having come on for final hearing by the court without a jury on June 11, 1957 and the court having heard all the evidence adduced and being fully advised in the premises, it is hereby ordered, adjudged and decreed as follows:

1. Defendants now and hereafter shall accept applications for admission or transfer to all elementary classes under their control (except in the schools named in paragraph 2 as to which applications will be accepted as described in that paragraph), in accordance with rules and regulations set forth in paragraph 3 and every Negro child's application to classes governed by the instant paragraph shall be considered and granted on the basis upon which it would be considered and granted if he were white.

2. Defendants shall accept Negro children's applications for admission or transfer to Old Post Road, Bel Air and Highland elementary schools for the school year 1958-1959 and thereafter; and shall accept Negro children's applications for admission or transfer to Forest Hill, Jarrettsville and Dublin elementary schools and the sixth grade at Edgewood High School for the school years 1959-1960 and thereafter. Every Negro child's application to the schools named in this paragraph for the respective school years specified herein and thereafter shall be considered and granted on the basis upon which it would be considered and granted if he were white.

3. All applications for transfer to elementary classes shall be made during the month of May on a regular application form furnished by the Board of Education and must be approved by the applicant's classroom teacher and

the principal of the school the applicant attends. Such applications will be reviewed at the regular June meeting of the Board of Education. Applicants and their parents will be informed of the action taken on applications prior to the close of school in June of each year. In no event shall a Negro child's application for admission or transfer be rejected if it would have been granted had he been white.

4. A Negro child's application for admission or transfer to seventh grade classes commencing September, 1958, and thereafter, under defendant's control shall be considered and granted on the basis upon which it would be considered and granted if he were white. Such applications to the following classes shall be so treated during and after the year set forth alongside the class, as follows:

eighth grade	— 1959
ninth grade	— 1960
tenth grade	— 1961
eleventh grade	— 1962
twelfth grade	— 1963

In 1963 and thereafter all Negro applicants to all classes shall be admitted on the same basis upon which they would be admitted if they were white.

5. Commencing September, 1957 applications for admission or transfer by Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendants' control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. The qualifications will be measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the

principals of the schools from which the pupil is transferring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools. Apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4 no racial distinction is to be made in the administration of these tests and evaluations. Such applications may be made to the Board of Education between July 1 and July 15 of 1957 and years following in which these tests may be given.

6. Infant plaintiff Moore shall be admitted to the sixth grade at the Bel Air School. Infant plaintiff Spriggs shall be admitted to the eighth grade at Edgewood High School.

7. No racial distinctions whatsoever shall be made by defendants in treating Negro children who have been admitted to schools pursuant to this decree.

8. This Court retains jurisdiction for the purpose of granting any other relief that may become necessary.

Opinion of November 23, 1956

THOMSEN, Chief Judge.

This action, brought by four Negro children seeking admission to certain public schools in Harford County, Maryland, present: (1) the usual questions under *Brown* v. *Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Id., 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; (2) the same questions of law which were raised by the defendants in *Robinson* v. *Board of Education*, D. C. D. Md., 143 F. Supp. 481; and (3) a problem of equitable estoppel arising out of a previous action brought by the plaintiffs herein and others against the defendants herein, which was dismissed by the plaintiffs in reliance upon a resolution adopted by the defendants, the Board of Education of Harford County.

FACTS

Harford County is predominately rural, but in the southern portion of the county there are two large government reservations, the Aberdeen Proving Ground at Aberdeen, and the Army Chemical Center at Edgewood. On these reservations there are non-segregated housing developments.

There are approximately 12,600 white students and 1,400 Negro students in the public schools of Harford County. The defendant Board of Education operates a 6-3-3 system; that is, 6 years of elementary school, 3 years of junior high and 3 years of senior high. The white high schools, at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen, and Havre de Grace, are combination junior-senior high schools; the colored schools, at Hickory and Havre de Grace, are "consolidated schools", comprising elementary, junior high and senior high classes.

Opinion of November 23, 1956

On June 30, 1955, just one month after the second opinion in *Brown* v. *Board of Education*, the Board of Education of Harford County selected a Citizens Consultant Committee of thirty-six members from all sections of the county, five of whom were Negroes, to consider the problem of desegregation of the public schools in Harford County and to make recommendations to the Board of Education.

On July 27, 1955, a group of Negro parents petitioned the Board of Education, calling upon them "to take immediate steps to reorganize the public schools under your jurisdiction on a nondiscriminatory basis."

The Citizens Consultant Committee held its first meeting on August 15, 1955, and was split up into a number of sub-committees, to consider facilities, transportation and social relationships respectively. A member of the staff of the Board of Education served as consultant to each sub-committee. The sub-committees met at various times during the rest of the year 1955 and the first two months of 1956.

On November 29, 1955, the four infant plaintiffs in the instant case, together with seventeen other Negro children, through their parents and next friends, brought suit in this court against the defendants herein (Civil Action No. 8615), alleging that the Board had "refused to desegregate the schools within its jurisdiction and has not devised a plan for such desegregation," and praying that:

> "1. The court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and the application for permanent injunction according to law and that upon such hearings:
>
> "2. The Court enter preliminary and permanent judgments that any orders, customs, practices, and usages pursuant to which said plaintiffs are segre-

gated in their schooling because of race, violate the Fourteenth Amendment to the United States Constitution.

"3. The Court issue preliminary injunctions ordering the defendants to promptly present a plan of desegregation to this Court which will expeditiously desegregate the schools in Harford County and forever restrain and enjoin the defendants and each of them from thereafter requiring these plaintiffs and all other Negroes of public school age to attend or not to attend public schools in Harford County because of race.

"The Court allow plaintiffs their costs and such other relief as may appear to the Court to be just."

On February 27, 1956, the Citizens Consultant Committee held a meeting, at which all of the sub-committees presented their final reports, and the full committee unanimously adopted the following resolution:

"To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956."

On March 7, 1956, the Board of Education of Harford County adopted the resolution as submitted by the Citizens Consultant Committee.

Opinion of November 23, 1956

On March 9, 1956, Civil Action No. 8615 came on for hearing before me on defendants' motion to dismiss the complaint, pursuant to Rule 12(b), Fed. Rules Civ. Proc. 28 U. S. C. A. At the beginning of the hearing, counsel for defendants advised the court that the Board of Education of Harford County had "approved or adopted" the recommendation offered by the Citizens Consultant Committee and read the resolution into the record. He then said: "Since that plan embraces the relief prayed for, I think that takes care of that, and I want to call that to Your Honor's attention." Counsel for plaintiffs then said: "We are in a position to enter into a consent decree embodying the terms of this resolution. We would like to discuss it, but I do not think there is any need for further litigation." Counsel for the defendants replied: "I do not think that the Court should enter a consent decree when the relief prayed for is the policy adopted by the Board. I think the complaint should be dismissed in open court because there is really nothing before the Court to effectuate." I then left the bench so that counsel could discuss the matter more freely. When court reconvened the following colloquy took place:

> "Mr. Greenberg: We discussed this resolution that has been adopted by the School Board and we have told counsel for the defendants that we are sure they are proceeding in good faith and this plan is acceptable to us, and we will dismiss our suit and make that a matter of record in open court, and file this.
>
> "Mr. Barnes: That's agreeable to the defendants, your Honor.
>
> "The Court: I think it would be well to have the record show that in view of the fact that you have been presented with this you offered to dismiss the suit, and attach this paper as an exhibit.

"Mr. Greenberg: Yes, sir.

"The Court: I am very happy this has worked out in a very satisfactory way."

The following stipulation, signed by counsel for all parties, was filed in the case on the same day:

"Dismissal of Action

"1. This cause came to be heard in this Court on motion to dismiss the 9th day of March, 1956.

"2. Defendants, by their counsel, presented to the Court the attached Resolution of the Harford County Citizens Consultant Committee, adopted by the Harford County Board of Education, as submitted, at its regular meeting on March 7, 1956.

"3. Relying upon said resolution, as adopted, plaintiffs hereby withdraw their complaint, and pray that the same be dismissed, costs to be paid by plaintiffs."

To this stipulation was attached a certified copy of the resolution recommended by the Citizens Consultant Committee and adopted by the Harford County Board of Education.

On June 6, 1956, the Board of Education adopted the following "Transfer Policy", which all parties agree was reasonable:

"If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the

Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

"Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

"While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

"All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956."

The transfer policy was advertised in all newspapers published in Harford County. Sixty applications for transfer of Negro pupils were submitted within the time specified.

On August 1, 1956, the Board of Education of Harford County adopted a "Desegregation Policy", embodied in a document which recited the appointment of the Citizens Consultant Committee, the recommendation made by that Committee, the resolution adopted by the Board of Education on March 7, 1956, and the transfer policy adopted by the Board in June. The statement of Desegregation Policy continued as follows:

Opinion of November 23, 1956

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

Pursuant to the Desegregation Policy so adopted, fifteen of the sixty applications were granted, and forty-five, including those of the infant plaintiffs in the instant case, were refused. On August 7, 1956, the defendant Charles W. Willis, Superintendent of Schools, sent the following letter to the parents of each of the infant plaintiffs:

"The Board of Education, at its regular August meeting, adopted a policy for the desegregation of Harford County schools. Under the provisions of this policy your child will not be allowed to transfer from his present school. Your request for a transfer has been refused by the Board of Education.

"A copy of the desegregation policy is enclosed."

Neither the infant plaintiffs nor their parents appealed to the State Board of Education from the action of the County Superintendent denying their requests for transfer. Nor have any appeals been filed by or on behalf of any of the other Negro children whose requests for transfer were refused.

On August 28, 1956, the four infant plaintiffs by their parents and next friends filed the instant suit, pursuant to Rule 23(a)(3), "for themselves and on behalf of all other Negroes similarly situated", alleging most of the facts set out above and other facts, some of which are disputed, which need not be detailed at this time.

Infant plaintiff Moore seeks transfer from the Central Consolidated Elementary School in Hickory to the elemen-

tary school in Bel Air, where he resides; Spriggs seeks transfer from the school in Hickory to the High School (junior high) in Edgewood, where he resides; Slade and Garland seek transfer from the Havre de Grace Consolidated School to the Aberdeen High School (9th and 11th grades respectively). They pray that:

> "1. The Court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and application for permanent injunction according to law and that upon such hearing;
>
> "2. The Court enter preliminary and permanent judgments, that any orders, customs, practices and usages pursuant to which said plaintiffs are each of them, their lessees, agents and successors in office from denying to plaintiffs and other Negro residents of Harford County of the State of Maryland admission to any Public School operated and maintained by the Board of Education of Harford County, on account of race and color." (sic)

Defendants filed a motion to dismiss the complaint pursuant to Rule 12(b), raising substantially the same points which were considered in *Robinson* v. *Board of Education of St. Mary's County, supra.* I overruled that motion on October 5, 1956. Defendants filed their answer on October 24, and the case was set for hearing on November 14. Both sides offered testimony and documentary evidence. From the testimony it appears that most, but not all, of the schools in Harford County are overcrowded if the "standards" or "goals" set out by the State are considered, namely, an average of 30 per class in elementary schools and 25 per class in secondary schools. But defendants conceded that any white children moving into the county would be admitted to the appropriate white school, however crowded

The factors considered by the Board of Education in adopting the August 1 Desegregation Policy were discussed at some length. The President of the Board of Education and the County Superintendent testified that they did not consult counsel before adopting the August 1 Desegregation Policy, but that they thought this policy was in accord with the recommendation of the Citizens Consultant Committee and with the March 7 resolution adopted by the Board.

Plaintiffs' counsel do not charge bad faith against either the Board or the Superintendent, but contend that:

> "I. The Harford County School Board Resolution of March 7, 1956, meant that from the following school year and thereafter there would be no legally compelled racial segregation of school children in Harford County;
>
> "II. The defendants are estopped from any further delay in complete integration by their action in causing plaintiffs to withdraw plaintiffs' original suit in reliance on the Board's resolution, which resolution was expressly incorporated by reference into the court's order of dismissal;
>
> "III. Plaintiffs are entitled to judicial rather than administrative relief at this time in view of the history and facts of this case;
>
> "A. Defendants, by their actions, are estopped from asserting the doctrine of administrative exhaustion as a defense;
>
> "B. Even if defendants were not estopped from raising the defense of the doctrine of administrative exhaustion, the defense would nevertheless fail as the doctrine is not here applicable;
>
> "IV. Even if defendants could validly raise the questions of necessary administrative delay, their

own actions clearly demonstrate the fact that no additional time is needed to solve administrative problems;

"A. Defendants are administratively ready to effectuate desegregation;

"B. 'Community unreadiness' constitutes no legal justification for continued segregation."

Discussion

[1] The Maryland statutes and decisions were analyzed in *Robinson* v. *Board of Education of St. Mary's County*, *supra*, 143 F. Supp. at pages 487-491. I adhere to that analysis, and it need not be repeated here. It is clear that some of the factors considered by defendants in the instant case when they adopted the August 1 Desegregation Policy, and some of the points argued by counsel for plaintiffs in opposition thereto, involve administrative problems, over which the State Board of Education has jurisdiction, and which should be appealed to that Board under the Maryland authorities. Some of the other factors and points involve legal questions, which under Maryland law are for the courts. Most, if not all, involve both administrative and legal problems. Even the estoppel point is a mixed question, because the March 7 resolution leaves open at least the question of available facilities, whatever other matters may have been foreclosed.

Whether the court should attempt to segregate the legal questions and decide them at this time, or should defer any decision until the State Board has been given an opportunity to pass on the problem as an integrated whole, is a matter of comity and discretion. Since, at the time of the hearing in the *St. Mary's County* case, the State Board assured the court that it will give prompt attention to any

appeal filed by or on behalf of Negro students, I am satisfied that I should not make a final decision in this case until the plaintiffs have appealed to the State Board from the action of the County Superintendent denying their applications for transfer. *Brown* v. *Board of Education*, 349 U. S. 294, 75 S. Ct. 753; *Hood* v. *Board of Trustees of Sumter County School District No. 2*, 4 Cir., 232 F. 2d 626; *Carson* v. *Board of Education of McDowell County*, 4 Cir., 227 F. 2d 789; *Robinson* v. *Board of Education of St. Mary's County*, D. C. D. Md., 143 F. Supp. 481. However, the final decision in this court, if one is necessary after the State Board has acted, should be rendered within such time that the losing parties may have an appeal heard by the Court of Appeals for the Fourth Circuit at its June, 1957 term.

Conclusions

[2] 1. The appointment of the Citizens Consultant Committee in the summer of 1955, its study, resulting in its recommendation to the Board of Education, and the resolution adopted by the Board on March 7, 1956, were a prompt and reasonable start toward compliance with the Supreme Court ruling.

2. I intimate no opinion at this time with respect to the sufficiency or propriety of the Desegregation Policy adopted by the Board on August 1, 1956.

3. I will enter a decree dismissing this action unless the plaintiffs appeal to the State Board of Education on or before December 15, 1956, from the action of the County Superintendent refusing their applications for transfer. If plaintiffs enter such an appeal, I will stay further proceedings in this case until the State Board shall have decided the appeal or shall have delayed decision for an unreasonable time; provided that after the State Board shall have rendered its decision, or after March 1, 1957, whichever is earlier, either plaintiffs or defendants may request the court to set this case for further argument at a prompt decision.

Opinion of June 20, 1957

THOMSEN, Chief Judge.

This action was brought by four Negro children, on their own behalf and on behalf of those similarly situated, seeking admission to certain public schools in Harford County, Maryland. The background and first stages of the case are detailed in an opinion filed herein on November 23, 1956, D. C., 146 F. Supp. 91.

Following that opinion, the four plaintiffs and eight other children, who have asked and been granted leave to intervene in this case, filed appeals with the State Board of Education from the refusal of the Superintendent of Schools of Harford County to grant their applications for transfer from consolidated schools for colored children to various white schools which were not desegregated in September, 1956.

While those appeals were pending before the State Board, on February 6, 1957, the Harford County Board adopted the following "Extension of the Desegregation Policy for 1957-1958":

> "Applications for transfers will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and

must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

"All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

After a hearing, the State Board dismissed the appeals, finding that "the Harford County Board acted within the policy established by the State Board", that "the County Superintendent acted in good faith within the authority set forth in the August 1, 1956, Desegregation Policy adopted by the County Board",[1] that the Desegration Policy was adopted in a bona fide effort to make a reasonable start toward actual desegregation of the Harford County public schools", and that "this initial effort [the desegregation of three grades in two elementary schools] has been carried out without any untoward incidents". The State Board also took "cognizance of the resolution of the County Board of February 6, 1957", set out above herein, "as well as the testimony to the effect that the proposed Harford County Junior College, which is to be established in Bel Air in the fall of 1957, will open on a desegregated basis, and also the testimony to the effect that the present program of new buildings and additions will make further desegregation possible".

After the decision of the State Board, plaintiffs set this case for further hearing, as provided in the earlier decree, 146 F. Supp. at page 98. That hearing was held on April 18, 1957. Charles W. Willis, the Harford County Superintendent, explained and amplified the February 6, 1957 resolution of the County Board. The President of the

[1] See 146 F. Supp. at page 95.

Board and its counsel accepted that interpretation. So explained and amplified, the plan was substantially the same as the plan which was later adopted by the County Board on May 1, 1957, as follows:

> "The Board reviewed its desegregation policy of February 6, 1957. In accordance with this plan, the following elementary schools will be open in all six grades to Negro pupils at the beginning of the 1957-1958 school year:
>
> "Emmorton Elementary School
> "Edgewood Elementary School
> "Aberdeen Elementary School
> "Halls Cross Roads Elementary School
> "Perryman Elementary School
> "Churchville Elementary School
> "Youth's Benefit Elementary School
> "Slate Ridge Elementary School
> "Darlington Elementary School
> "Havre de Grace Elementary School
> "6th Grade at Aberdeen High School
>
> "Schools now under construction or contemplated for construction in 1958, if no unforeseen delays occur, will automatically open all elementary schools to Negro pupils by September, 1959. As a result of new construction, the elementary schools at Old Post Road, Bel Air, and Highland will accept applications for transfer of Negro pupils for the school year beginning in September, 1958. Forest Hill, Jarrettsville, Dublin and the sixth grade at the Edgewood High School would receive applications for the school year beginning in September, 1959.
>
> "As a normal result of this plan, sixth grade graduates will be admitted to junior high schools for the first time in September, 1958 and will pro-

ceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963.

"The Board will continue to review this situation monthly and may consider earlier admittance of Negro pupils to the white high schools if such seems feasible. The Board reaffirmed its support of this plan as approved by the State Board of Education."

At the April, 1957 hearing, I ruled tentatively that the plan was generally satisfactory for the elementary grades, but not for the high school grades, and suggested that the parties attempt to agree on a modified plan. Conferences between counsel were held, but no agreement was reached. The County Board, however, on June 5, 1957, modified the plan as follows:

"The Board reaffirmed its basic plan for the desegregation of Harford County Schools, but agreed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

"Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application will be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

"These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but

not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

"The Board of Education and its professional staff will keep this problem under constant and continuous observation and study."

The modified plan was presented to the court at a hearing on June 11, 1957. It was made clear that when an elementary school has been desegregated, all Negro children living in the area served by that school will have the same right to attend the school that a white child living in the same place would have, and the same option to attend that school or the appropriate consolidated school that a white child will have. The same rule will apply to the high schools, all of which operate at both junior high and senior high levels, as they become desegregated, grade by grade. Of course, the County Board will have the right to make reasonable regulations for the administration of its schools, so long as the regulations do not discriminate against anyone because of his race; the special provisions of the June 5, 1957 resolution will apply only during the transition period.

[1] Willis also testified that the applications which will be made pursuant to the June 5, 1957 modification will be approved or disapproved on the basis of educational factors, for the best interests of the student, and not for other reasons. I have confidence in the integrity, ability and fairness of Superintendent Willis and of the principals, supervisors and others who will make the decisions under his direction. In the light of that confidence, I must decide whether the modified plan meets the tests laid down in the

opinions of the Supreme Court and of the Fourth Circuit,[2] with such guidance as may be derived from other decisions.[3] The burden of proof is on defendants to show that a delay during a transition period is necessary, that the reasons for the delay are reasons which the court can accept under the constitutional rule laid down by the Supreme Court, and that the proposed plan is equitable under all the circumstances. In considering whether defendants have met that burden, the court must recognize that each county has a different combination of administrative problems, traditions and character. Many counties are predominantly rural, others suburban; some have large industrial areas or military reservations. See 146 F. Supp. at page 92.

[2] Eleven out of the eighteen elementary schools in Harford County will be completely desegregated in September, 1957, three months from now. Three more will be completely desegregated in 1958, and the remaining four in 1959. The reason for the delay in desegregating the seven schools is that the county board and superintendent believe that the problems which accompany desegregation can best be solved in schools which are not overcrowded and where the teachers are not handicapped by having too many children in one class. That factor would not justify unreasonable delay; but in the circumstances of this case it justifies the one or two years delay in desegregating the seven schools.

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[2] Brown v. Board of Education, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; Brown v. Board of Education, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Carson v. Warlick, 4 Cir., 238 F. 2d 724; Carson v. Board of Education of McDowell County, 4 Cir., 227 F. 2d 789.

[3] Aaron v. Cooper, D. C. E. D. Ark., 143 F. Supp. 855; Kelley v. Board of Education of the City of Nashville, M. D. Tenn., 2 Race Rel. L. Rep. 21 (1957). Cf. Mitchell v. Pollock, W. D. Ky., 2 Race Rel. L. Rep 305 (1957).

With respect to the high schools, other factors are involved. Superintendent Willis testified that when a child transfers to a high school from another high school he faces certain problems which do not arise when he enters the seventh grade, which is the lowest grade in the Harford County high schools. After a year or so in the high schools social groups, athletic groups and subject-interest groups have begun to crystallize, friendships and attachments have been made, cliques have begun to develop. A child transferring to the school from another high school does not have the support of a group with whom he has passed through elementary school. A Negro child transferring to an upper grade at this time would not have the benefit of older brothers, sisters or cousins already in the school, or parents, relatives or friends who have been active in the P. T. A. High school teachers generally, with notable exceptions, are less "pupil conscious" and more "subject conscious" than teachers trained for elementary grades, and because each teacher has the class for only one or two subjects, are less likely to help in the readjustment. The Harford County Board had sound reasons for making the transition on a year to year basis, so that most Negro children will have a normal high school experience, entering in the seventh grade and continuing through the same school. But I was unwilling in April to approve a plan which would prevent all Negro children now in the sixth grade or above from ever attending a desegregated high school.

However, the modified plan adopted on June 5, 1957, permits any Negro child to apply next month for transfer to a presently white high school, and if his application is granted, to be admitted in September, 1957, three months hence. This plan is different from any to which my attention has been called or about which I have read. It is an equitable way of handling the transition period. My only doubt is whether it is necessary to postpone until September,

1958, the complete desegregation of the seventh grade. But I am not charged with the responsibility of administering the Harford County public school system. Although I think the reasons given for the delay of one year are less satisfactory than the reasons given for the rest of the plan, a federal court should be slow to say that the line must be drawn here and cannot reasonably be drawn there, where the difference in time is short and individual rights are reasonably protected, during the transition period, as they are by the June 5, 1957 modification.

[3] Plaintiffs are obviously worried whether the June 5 plan will be carried out in good faith, or whether it will be used as a means of postponing the admission of Negro children into the high schools without proper justification. Although, as I have said, I have confidence in Superintendent Willis and his staff, plaintiffs' doubts are not unreasonable in view of the past history of this litigation. I will, therefore, enter a decree which will spell out the rights of individual children under the plan, and will retain jurisdiction of the case, so that if any child or his parents feel that his application has been rejected for a reason not authorized by the modified plan, a prompt hearing may be granted.

There remains the question of estoppel, based upon the resolution adopted by the County Board on March 7, 1956, and the interpretation of that resolution by its counsel in open court in the earlier Harford County case, as a result of which the plaintiffs therein dismissed their action. The facts on this point are set out fully in 146 F. Supp. 93 et seq.

[4] The March 7, 1956 resolution was somewhat ambiguous, but, as it was interpreted by defendants' counsel in open court, plaintiffs were justified in believing, as I did, that applications for transfer would be considered without regard to the race of the applicant. The County

Board interpreted it differently in the statement entitled "Desegregation Policy" adopted on August 1, 1956; see 146 F. Supp. at page 95. I cannot accept the interpretation adopted by the County Board, but I find that it was adopted as a result of a mistake and not as the result of any bad faith on the part of the Board, the Superintendent, or their counsel. The Board adopted the Desegregation Policy of August, 1956, in the honest belief that it was to the best interests of all of the children in the County. Pursuant to that policy the Superintendent admitted fifteen Negro children to two previously white schools, but denied admission to forty-five others, including the infant plaintiffs herein.

There is grave doubt whether a governmental agency such as a county school board can be estopped from adopting a policy, otherwise legal, which it believes to be in the best interests of all the people in the County. In the instant case it would be inequitable and improper, on the ground of estoppel, to require the County Board to open all schools to Negroes immediately, as requested in the complaint. The County Board should not be foreclosed by the facts which I have found from taking such actions, and adopting and modifying such policies, as it believes to be in the best interest of the people in the County, so long as those actions and those policies are constitutional.

[5] The individual plaintiffs in the earlier case, however, were prevented from pressing their individual rights in this court and on appeal by the adoption of the March 7, 1956 resolution and by what took place in this court in that case. See 146 F. Supp. 93 et seq. Two of those infant plaintiffs are before the court in this case, and their counsel urge that their individual rights, as well as any class rights, be enforced. The reasons which prevent an estoppel against the County Board so far as its general

policies are concerned, do not apply with equal force to the individual claims of those two children. It would not be equitable to delay any further the enforcement of their individual rights.

I will, therefore, include in the decree a provision enjoining the County Board from refusing to admit Stephen Moore and Dennis Spriggs to whatever school would be appropriate for them if they were white.

Excerpts from Testimony

* * *

Direct testimony of CHARLES W. WILLIS, Superintendent of Schools.

[15] Q. How many Negro children applied? A. We had 59 applications, and there was a mix-up on one that we later admitted.

[16] Q. Well, approximately? A. That made 60.

Q. How many Negro children are there in the County School System altogether? A. A little over 1400 at the present time.

Q. How many white children are there in the County School System? A. About 12,600, roughly ten percent Negro children, about 14,000 children.

Q. That is 60 children of the total school population out of how many? A. 14,000.

Q. And how many Negro children were admitted? A. Fifteen.

Q. Now, what was the reason for admitting fifteen rejecting the other forty-five? A. The main reason why was we had facilities in the areas where the children were admitted, and we had integrated housing in those areas, and we felt that we would have less social adjustment problems in the lower grades, and this was the beginning of the plan of gradual integration, and we felt that that would work in our System.

We had studied all we could find out about previous attempts and we had found out that trouble usually arose in [17] rural areas, quite a bit more from rural areas, and we had committees from these rural areas, protest any action on the part of the Board, and this seemed like the most workable plan.

Q. Was there an absence of facilities to admit the forty-five who desired admission? A. In some places, yes.

Q. For how many places? A. Well, I can't exactly say specifically because I don't know just where the applications were from, which schools they were made from.

Mr. Barnes: Maybe you had better ask him about a specific school. Ask him about a specific school.

The Court: Eventually I want to know about the four applications as well as the others.

By Mr. Greenberg:

Q. Now, in what instances was there an absence of facilitiesities—that is, tell us in something more than just general terms—with respect to not admitting any of these forty-five applicants who desired admission. A. That was from the area in Bel Air, Havre de Grace, Aberdeen, Jarrettsville, Highland, Churchville, Youth Benefit.

Mr. Greenberg: Should I give him the list?

The Witness: Yes, sir, I better look at it to be sure.

Old Post Road, Emmerton, Aberdeen, Youth Benefit, Forest Hill, Churchville, Bel Air.

[18] The Court: Jarrettsville.

Mr. Greenberg: Churchville.

The Witness: Highland, Dublin, Havre de Grace. Those are Elementary Schools.

The Court: Well, Aberdeen Elementary, Bel Air Elementary.

The Witness: All of those are Elementary.

The Court: All of those Elementary?

The Witness: Yes, not high schools. Bel Air.

The Court: A matter of facilities?
The Witness: Yes. North Harford. Edgewood
The Court: Jarrettsville.

By Mr. Greenberg:

Q. Mr. Willis, are you aware that the Citizens Consultant Committee reported that there is an excess of space in the Havre de Grace Elementary and High School? A. No, I was not aware they reported on the Havre de Grace Elementary School, no.

Q. Well, look at page 4. A. Well, this is a four-room affair, and we had this abandoned school building, and this is used for purposes of special education.

Q. What about the high school? A. The high school I didn't list.

[19] The Court: You just said.
The Witness: The Havre de Grace High School, no, I didn't include that.

By Mr. Greenberg:

Q. You listed about fifteen schools in which there was supposed to be an absence of facilities; is that correct? A. Yes, sir, according to the standards that are used nationally.

Q. That would be an average of about three Negro children out of the total in those schools, and if there were white children that moved into the area, would they be admitted? A. They would be admitted.

Q. So it is not the absence of facilities but the fact that the children were Negro; is that correct? A. I would say that is not exactly it, no. We have to consider a lot of factors including the transportation factor, which is one

of the big things in the County, as we transport over 14,000 children, and I think there is the plan, I mean the idea of adjusting the thing and if you wish, let me explain it.

Q. Not at this time, no.

The Court: I think you should let him explain it if he wishes to do so.

The Witness: Now, I would like to describe it in this way, your Honor. When the original opinion, the original [20] opinion of the Supreme Court came out in 1954, the first opinion, the members of the Board of Education felt about these clearly in needed facilities in the schools and were approached by a great many people particularly in our rural areas about how impossible it was at the time for us to do anything along these lines.

The Court: In the matter of—

The Witness: In the matter of integration, and it was the thought that if we would do it gradually in a matter of starting off in one area which was better prepared for the integration program than in another area we should do it that way, we would have a better chance of success in these schools.

By Mr. Greenberg:

Q. If white persons moved from Delaware or Virginia or elsewhere, moved into Harford County, that is at the present time, such as to work in an industrial plant, would their children be admitted to the schools at the present time? A. Yes, sir, they would.

• • •

[33] Q. Why did you and the Board integrate the first three grades in Bel Air Elementary—Edgewood Elementary School and [34] Hall Cross Roads School and not

the other grades in these and the other schools in Harford County? A. For these reasons: One reason was that space was limited in these schools; two, the people were used to living together in integrated housing and working together in areas of industrialization, and we also had been informed by Mr. Wilson, our attorney, that the suggestion to begin with a control area had been made last year, and we got the impression that the feeling was that if we could start in an area of decontrol than any other place we had a much better chance of success.

Q. Well, were there any other reasons that moved the Board? A. One was that in these specific areas we found that little children had no prejudices; they can adjust more easily than older children who have fixed prejudices, or as adults, and also there is the problem that if you begin with children putting them together that their social adjustments are much easier, they can adjust themselves more readily, and are more emotionally stable, and this seemed a more favorable climate in which to work, and our experience has shown that what we have done is working satisfactorily, and the children are getting along all right and satisfactorily.

Q. And it was for those reasons that the Board announced [35] its desegregation policy of August 1st, 1956 that you denied these applications on August 7th, 1956? A. I had no other reason except this that—

Q. Yes. A. —that the Board is primarily concerned with the educational problem, and they were interested in everyone getting the best possible education and also in the non-interference with the advancement or extension of the whole educational program, and we read in the papers, principally in Delaware and other places that these things have caused problems, trouble with the integration problem, which was something that could affect the whole school system.

Mr. Greenberg: I move to strike out this testimony, Your Honor, problems in Delaware, and so on, there is no eveidence that any of those things have any effect here, and in addition to that, I submit that it is totally irrelevant.

The Court: Well, if it is one of the things that influenced them it may be an important consideration. That was one of the points you are making.

• • •

[47] The Court: As to the next question, I will allow [48] either side to object if they wish to object because it is pretty close to what the Court has to decide, but I take it that a decision on these questions involves what might be called administrative factors and policy factors, and that in any final decision they may be mixed.

What administrative reasons were there for refusing the transfer of each of these four children?

Mr. Barnes: Your Honor, don't we have to define what an administrative reason is or factor is?

The Court: Well, what he has said was that in the case of two of the children there was an overcrowded condition in the Bel Air School. There was an overcrowded condition in the Edgewood school. There was no overcrowded condition in Aberdeen.

Perhaps this is the way to put it: In making your decision with respect to these sixty children, did you consider the overcrowded condition of a school, that is, an individual school, as a reason for or a reason against transferring children, or was the consideration of the overcrowded condition of the individual school simply one of the factors considered in adopting the general policy?

The Witness: I think there is a yes or no answer which requires an explanation. I think the over-all

policy was predicated upon the things that I have just mentioned [49] before which restricted the permission to transfer the first three grades, and within that policy facilities were considered.

The Court: So that confining it to the first three grades was a question of—

The Witness: Facilities.

The Court: —facilities.

The Witness: Yes, no—

The Court: No, so the question of confining it to the first three grades was a question of policy. That is, in the first three grades facilities were considered?

The Witness: That is correct. That is what I meant to say.

The Court: Was the decision to limit it to the two schools, yours or the School Board's?

The Witness: Well, I guess we come back to the other statement that it was a matter of facilities in the early schools that were available.

The Court: Were they the only two schools that had the facilities available or were there a number of other schools in which had facilities been available to which a child might have been admitted if he had applied?

The Witness: There were two other schools, one in Perryman and Darlington.

The Court: Two other schools were not overcrowded?

[50] The Witness: That is correct.

The Court: And they were—and you say no applications for Perryman?

The Witness: No.

The Court: And there was one application for Darlington?

The Witness: Yes.

The Court: And that was refused?

The Witness: Yes.

The Court: For policy reasons?

The Witness: Policy reasons I would say outside of the original policy, yes.

The Court: Because it was a particularly sensitive spot?

The Witness: Yes, it is a very rural area, one of our most rural areas.

The Court: I think that is all I have.

If either side wishes to ask any further questions based upon the line I have opened up, you are welcome to do so.

By Mr. Greenberg:

Q. When you speak of "overcrowding" what do you mean by overcrowding? What is your definition of overcrowding? A. Over thirty in an elementary and over twenty-five in a high school.

[51] Q. Then in each of these schools when they have that many they are overcrowded? A. No, you can't say that because in a high school you might have in one class eight or ten or in another forty or forty-five.

Q. So you mean the over-all average? A. That is correct. Those are the standard figures used in practically all school analyses.

The Court: I think that is a fact that the Court would have to find that you will have to use another method of calculating crowding in the high and elementary because there is a difference in courses.

The Witness: Yes.

Charles W. Willis—Direct

By Mr. Greenberg:

Q. Now, in passing upon the application of each applicant for transfer, did you look at the school to which he applied, the grade in which he was applying and determine that it was crowded or not crowded? A. Yes.

Q. You did that? A. Yes.

Q. And it turned out that the only two schools in Harford County that weren't crowded were these two schools to which the plaintiffs, or the two schools to which certain applicants were seeking admission?

[52] The Court: I thought he said four.

The Witness: Yes.

By Mr. Greenberg:

Q. But if a white child had applied to any of the so-called overcrowded schools he would have been admitted? A. That's correct.

The Court: Were there Negro schools in these overcrowded also?

The Witness: Slightly, yes, but they are both combination schools, part high and part elementary, and you have to use both standards on them, but they are just slightly over capacity.

The Court: Are they more overcrowded or less overcrowded than white schools, or are they some one way and some the other?

The Witness: I would say it would be about like some of the others, your Honor, but I would like to answer your question specifically this way that they would have about a ten percent over their—they would be about ten percent over their capacity based upon the figures that we discussed before.

David G. Harry—Cross

The Court: You are talking about the Hickory Consolidated?

The Witness: Yes.

[53] The Court: Is about ten percent?

The Witness: About that point.

The Court: How about the Bel Air High school?

The Witness: That is about thirty-five percent. It has a capacity of 690, and it's something like 800.

The Court: Is the Edgewood High School any more overcrowded than the Hickory Consolidated School?

The Witness: I don't think so. I think they are probably about the same.

The Court: The other three were a matter of policy?

The Witness: Yes.

• • •

Cross-examination of DAVID G. HARRY, President of School Board.

[62] Q. You say these rural areas are sensitive areas; is that correct? A. That is correct.

Q. And if these people moved in you would still refuse? A. Well, it is part of the process of the educational system in rural areas and when you find it is working in one part of the County you have to work it out as a County System and not as an individual system, and when you find it is working in one part of the County you can move it to the other parts of the County, but it was my opinion and the opinion of the Board that we must limit it to the areas which are at the present time integrated in housing and in areas where the requests were greatest.

Q. So your reason was based on the fear that there might be conflict or racial difficulties? A. That is my feeling.

• • •

[104] The Court: Why can't you admit a child to the seventh grade in 1957?

The Witness: (Mr. Willis) I can't say why, your Honor, but the policy was moving forward three years, and that was all.

The Court: Is there any administrative reason as distinguished from the considerations which may legally be applied under the plan—I don't want to limit the question; I want to get everything—but what is the reason or reasons why children cannot be admitted to Junior High School in the fall of 1957?

You see, I am not in passing upon your plan passing upon the validity of the reasons that you offer for that plan. Some reasons I presume are valid; some reasons are invalid.

I am not saying what the reasons are. Each one must be applied to the facts of the particular case.

What is the reason why you can't admit people to the seventh grade?

The Witness: The only thing that I can say is that in extending the policy it was a gradual, a policy of gradual desegregation, and the Board in discussing it planned only to extend it three years at this time.

The Court: That's a matter of policy rather than [105] a matter of administrative necessity.

The Witness: Or administrative convenience, and your policy reasons have been stated in the evidence.

The Witness: Yes.

The Court: I want to be sure that when you have administrative reasons that they may be considered separately.

Now, I take it that you are allowing a child to enter the seventh grade there, would you permit a transfer to the eighth and ninth grades?

The Witness: The policy has not been extended beyond that.

The Court: Well, are there administrative reasons for saying that at the high school level children should start

at the seventh grade in junior high and the tenth grade in senior high?

The Witness: I think nothing but policy reasons.

The Court: Nothing but policy reasons?

The Witness: That is correct.

The Court: It is a policy reason and there is no administrative reason why you say the seventh grade in 1958 and not the eighth grade also, that it is only policy reasons.

The Witness: The only extension of the policy that has been accepted for the reasons that have been given.

[106] The Court: And no administrative reasons?

The Witness: Well, I won't say none, but at the moment, I don't think of any big one; let's put it that way.

• • •

[157] Mr. Barnes: Well, here is what I am afraid of. If you push this thing too fast, as my brother wants me to do, you are going to have some incidents among the students themselves in these high schools until after this whole problem has been developed in the lower grades when you are not likely to have those problems, and the Board can say honestly, "We have tried it in the lower grades and it worked well and there have been no incidents", and you go in with an entirely different atmosphere, not only from the public viewpoint, and I think myself it's perfectly absurd to say that you can't give any consideration to the public reaction in the public schools, but however that may be, the reaction of the children themselves because, if your Honor please, you can't get away from the fact, can't help but reflect the attitudes of their parents particularly in the adolescent age, and it's nonsense to say, well because you don't fear riots it has no effect upon the pedagogical system of the county. It works on the minds of the children.

If these colored children are not accepted, if they are rejected, whether it be by cold indifference or by active hostility, it is going to adversed affect their education.

[158] The Court: Well, isn't that just what the Supreme Court has said you can't consider?

Mr. Barnes: No, I don't think so, because that has to do with the pedagogical system of education.

The Court: Well, if you can continue this prejudice forever, then you will never get anywhere.

Mr. Barnes: No, not that.

The Court: You will never get anywhere.

Mr. Barnes: No, I agree you couldn't continue it forever, that I am quite willing to concede; but where you are making a bona fide effort to do it reasonably and rationally and to meet that problem, which we never have, certainly within a reasonable time to my way of thinking. This segregation situation has been with us for over a century.

The Court: What is going to be better in 1958 than in 1957?

Mr. Barnes: Because you will have your complete elementary schools practically completely integrated.

The Court: No, not completely integrated.

Mr. Barnes: No.

The Court: You will have two or three children who will have graduated from the elementary schools, two or three, or maybe a dozen, Negro children who will have had one or two years in the elementary schools.

[159] Mr. Barnes: That is very important, it seems to me.

The Court: And that's all you are going to have.

Mr. Barnes: That's true, and that's important, it seems to me.

The Court: And most of them are going to have one year.

Mr. Barnes: Well, that's so, because you have a pragmatic system as against a theoretical because the thing is, will it work?

Charles W. Willis—Direct

If I were going to theorize about this, I would say, "Well, nothing has ever happened, nothing is going to happen", and then it happens, what then?

Now, we have this system that has been adopted—

• • •

[175] Mrs. Mitchell: Your Honor, there has just been received this last resolution, and it is the first knowledge we have received of any action of the Board of Education of Harford County, and we would like to have the opportunity to go over the contents of the resolution which was enacted on June 5, 1957, because we have not had an opportunity to confer about it.

The Court: Well, a copy was given to me about five minutes ago; so we are in about the same situation.

• • •

Excerpts from Plaintiff's Exhibit 1-a

Aberdeen, Maryland
December 29, 1955

From: Subcommittee on Facilities

To: Harford Consultant Committee on Integration
Ernest H. Volkart, Chairman

I. Authority

On September 23, 1955, a subcommittee consisting of Harold Baker, Chairman, Mrs. Norman J. Schnepfe and Mr. Paul Beatly Harlan, Associate Members, was appointed to investigate and report on the various facilities at the disposal of the Board of Education of Harford County, particularly with reference to buildings, classrooms, and pertinent training aids. The subcommittee interpreted its mission to be: To establish a definite relationship between the number of classrooms available throughout the county, and the number of pupils enrolled, using as a standard the optimum figures set by qualified National and State authorities, and also, insofar as possible, to preview conditions in the school year 1956-57. (See Appendix I)

II. Activities

The subcommittees began its investigations on September 28, 1955 and concluded them on November 29, 1955. Each of the twenty-three schools was visited by one or other member of the group. Neither principals nor teachers received advance notice of intended visits, thus assuring observation of the normal routine of operations.

Duration of examinations, depending upon the size of the unit, varied from one-half hour to two hours. Attention was directed toward condition (both external and internal)

of buildings. Heating and lighting facilities were carefully noted. Cafeteria equipment and management, shops and laboratories, domestic science rooms and equipment, safety and health provisions, recreational and athletic space and equipment, locker rooms, toilets, and all other adjuncts pertinent to the comfort and well-being of teachers and students were inspected. Special attention was focused upon classrooms with a view to determining whether the number of occupants exceeded or fell short of the standard (twenty-five high school or thirty elementary students per classroom) as determined by established authority. (See Appendix II)

III. Findings

1. *Buildings (General).* In the Harford school system there are only three buildings of frame construction. These include the elementary plants at Emmorton, Perryman, and a four-room structure at Havre de Grace purchased for the use of primary pupils who could not be accommodated at Havre de Grace Elementary School. All other buildings are of brick-concrete construction, and are either new, or in such state of preservation as to warrant alteration or addition to meet the demands of increased enrollment or new activities. All buildings are in safe condition.

2. *Heating plants.* These are, in the main, adequate. Where practicable, coal-burning units are being replaced by fuel oil systems.

3. *Light.* Window area, in proportion to wall area, conforms to conventional specifications. Lighting systems are adequate; fixtures are, for the most part, advantageously located.

4. *Cafeterias.* All except two schools, Emmorton and Perryman, have some provision for cafeteria service. The

newer buildings incorporate complete, modern dining rooms, kitchens, and food-storage space and equipment. Meals are adequate, of high quality, and designed to supply the nourishment required by the growing child. In many cases, mothers of attending pupils volunteer for service in the cafeterias. In buildings in which the cafeteria was not included in the original layout, gymnasiums, auditoriums, and other adaptable rooms serve the purpose. All cafeterias are clean, orderly, and well-staffed.

5. *Domestic Science Rooms, Laboratories and Shops.* These facilities are confined to high schools and consolidated schools. Increasing interest in "do it yourself" projects, together with the already existing trend in that direction, is reflected in the increasing demand for such training. Some shop units have been added in the current year; others are in the process of construction. Additional shop space and equipment is necessary in several schools. The same may be affirmed of Domestic Science facilities.

6. *Recreation and Athletics.* All schools have made such provision for recreation and athletics as space and funds will permit. In some cases students themselves have raised funds or performed the manual labor necessary to expand athletic facilities and programs.

7. *Safety and Health.* All schools have, in such measure as space, personnel, and equipment will permit, established some system looking to the elimination of safety hazards, and to the promotion of first-aid treatment. First-aid kits, cots, stretchers, and other equipment are at hand. Where enrollment justifies such action, part-time or full-time nurses are employed.

8. *Classroom Enrollment Ratios, 1955-1956.* Data gathered through investigations of the subcommittee, supplemented by figures supplied by the Board of Education,

Excerpts from Plaintiff's Exhibit 1-a

indicate that during the current school year (1955-56), 7,808 elementary pupils are occupying 217 classrooms, an average of 36 per room; that 5,479 high school students are housed in 154 classrooms, an average of approximately 35.7 per room.

9. *Current Classroom Construction.* In anticipation of increased enrollment, thirty-four additional classrooms are in the process of construction, and are expected to be available for use at the beginning of the 1956-57 school year. These are located as indicated below.

High Schools	Elementary Schools
Bel Air 16	Halls Cross Roads 4
Aberdeen 6	Edgewood 4
Edgewood 4	

10. *Classroom—Enrollment Ratios 1956-57.* The estimated elementary enrollment for the coming year (1956-57) is 8,290. To accommodate these pupils, 225 classrooms are available—an average of approximately 36.8 pupils per room. High school registration is expected to total 5,930 for which 188 classrooms are provided—an average of approximately 31.5 per room.

11. *Observations (General).* While the averages determined in the above paragraph exceed the figures generally conceded to be ideal, they do indicate an improvement over 1955-56 conditions especially as they apply to high schools. During the prosecution of the mission with which it was entrusted, your subcommittee has observed that while in certain cases executive and teaching personnel has been sorely taxed, the challenge has been promptly and efficiently met. Facilities have been exploited to the utmost without sacrificing any part of the educational or cultural training to which the pupil is entitled.

12. *Unused Capacities.* In Appendix IV, Column 4, it will be noted that eight schools are not expected to be filled to capacity in 1956-57. These are as follows:

Excerpts from Plaintiff's Exhibit 1-a

Elementary	High
Emmorton	Aberdeen
Edgewood	Havre de Grace
Halls Cross Roads	
Slate Ridge	
Darlington	
Havre de Grace (special)	

It is also apparent that these eight schools can accommodate 510 more students than they expect to receive. This condition may be attributed either to the fact that classrooms have been added or that population in certain specific areas has decreased. It should *not* be construed as affecting in any degree the averages established in Paragraph 10. What it actually indicates is an unequal distribution of pupils, since it can be seen by referring to Appendix IV, Column 3, that the seventeen schools not mentioned in Paragraph 12 will have 1,050 pupils in excess of their capacities. It also points to the fact that the schools listed in Paragraph 12 above may add to their rosters by admitting colored students residing in the area in which the school is located, or near enough to such area as to make use of existing transportation facilities. Such action would materially reduce the pressure on other schools whose facilities are sorely taxed.

IV. *Conclusions.* After carefully considering all factors at its disposal, the committee is of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-57.

Respectfully submitted,

Mrs. Norman J. Schneefe,
Mr. Paul Beatty Harlan,
Mr. G. Harold Baker, Chairman.

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No. 999

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7552

ROSLYN SLADE, EARLENE SCOTT, MONA LEISIA SCOTT, BERNARD BLACKSTONE, LARRY WILSON BLACKSTONE, ELLEN ELIZABETH BLACKSTONE, MAURICE L. HORSEY, III,

Appellants,

v.

BOARD OF EDUCATION OF HARFORD COUNTY, DAVID G. HARRY, PRESIDENT, HOWARD S. O'NEILL, G. ROBERT PENNINGTON, SAMUEL W. GALBREATH, MRS. ROBERT (BLANCHE S.) FLETCHER, CHARLES W. WILLIS, SUPERINTENDENT OF THE SCHOOLS OF HARFORD COUNTY,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND (ROSZEL C. THOMSEN, Chief Judge)

BRIEF AND APPENDIX FOR THE APPELLEES

EDWARD C. WILSON, JR.,
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The Daily Record Co., Baltimore 3, Md.

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IN THE

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FOR THE FOURTH CIRCUIT

No. 7552

ROSLYN SLADE, EARLENE SCOTT, MONA LEISIA SCOTT, BERNARD BLACKSTONE, LARRY WILSON BLACKSTONE, ELLEN ELIZABETH BLACKSTONE, MAURICE L. HORSEY, III,

Appellants,

v.

BOARD OF EDUCATION OF HARFORD COUNTY, DAVID G. HARRY, PRESIDENT, HOWARD S. O'NEILL, G. ROBERT PENNINGTON, SAMUEL W. GALBREATH, MRS. ROBERT (BLANCHE S.) FLETCHER, CHARLES W. WILLIS, SUPERINTENDENT OF THE SCHOOLS OF HARFORD COUNTY,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND (ROSZEL C. THOMSEN, Chief Judge)

BRIEF FOR THE APPELLEES

STATEMENT OF THE CASE AND OPINIONS BELOW

This is an Appeal by one Original infant colored Plaintiff and six infant Intervening colored Plaintiffs from a Judgment entered on July 3, 1957 by the United States District Court for the District of Maryland (Thomsen, C.J.), ap-

proving a Plan as outlined in the Judgment for the desegregation of the public schools of Harford County, Maryland. The Appellees (Defendants below) are the Board of Education of Harford County; David G. Harry, President of that Board, Howard S. O'Neill, G. Robert Pennington, Samuel W. Galbreath, Mrs. Robert (Blanche S.) Fletcher, who are members of the Board of Education; and, Charles W. Willis, Superintendent of the Schools of Harford County. There were three substantial hearings before the District Court (in addition to two pre-trial conferences), at which oral testimony was taken and documentary evidence offered. There was also a substantial hearing before the Maryland State Board of Education. Judge Thomsen wrote two full Opinions. One was filed on November 23, 1956, App.[1] 4a to 15a, 146 F. Supp. 91. The other Opinion was filed on June 20, 1957, App. 16a-25a, 152 F. Supp. 114.

QUESTION INVOLVED

Were the findings by the District Court (Thomsen, C.J.) that the Board of Education of Harford County, Maryland had made a prompt and reasonable start toward the desegregation of the Public Schools of Harford County and that additional time was necessary to effectuate such desegregation as set forth in the District Court's Judgment of July 3, 1957 clearly erroneous?

The Appellees maintain that Judge Thomsen's findings were not clearly erroneous; on the contrary, they were clearly in accordance with the great weight of the evidence.

---

[1] The reference "App." will be to the Appellants' Appendix. The reference to the Appellees' Appendix will be referred to as "Appellees' App. ".

APPELLEES' STATEMENT OF THE FACTS IN ADDITION AND SUPPLEMENTAL TO THE STATEMENT OF THE FACTS OF THE APPELLANTS

The Statement of Facts by the Appellants omits much of the background of the present case and the Appellants' Appendix omits much of the relevant testimony and proceedings. The Appellees deem it necessary to amplify the Appellants' Statement.

1. *The Maryland Statutes*

Chief Judge Thomsen carefully and fully analyzed the applicable Maryland Statutes in regard to the Maryland Public School System in his Opinion in *Robinson v. Board of Education of St. Mary's County*, 143 F. Supp. 481 (July 9, 1956). In the *Robinson* case, as in the case at bar, Judge Thomsen indicated that the Plaintiffs must first exhaust their administrative remedy by appeal to the State Board of Education, before the District Court would proceed with a decision in the case. The *Robinson* decision was not appealed to this Court which has not had the Maryland Statutory provisions in regard to the Maryland Public School System before it for consideration.

For the convenience of the Court and without attempting to repeat the excellent analysis by Judge Thomsen in the *Robinson* case, a brief summary of the Maryland Statutes is presented.

Article 77 of the Annotated Code of Maryland (1951 Edition) contains the relevant statutory provisions establishing in Maryland "a general system of free public schools; according to the provisions of this Article" (Sec. 1).

This Article in substantially its present form providing for "separate but equal" schools for white and colored

pupils, came into the Maryland law by the Act of 1872, Chapter 377. The original Maryland Statute providing for public schools on a state-wide basis was the Act of 1865, Chapter 160 (passed March 24, 1865), which provided for separate schools for white and colored pupils, with a provision, however, that expenditures for colored schools should be limited to school taxes collected from colored taxpayers, together with such donations as might be given for colored school purposes. As indicated this latter provision was eliminated by the Act of 1872, Chapter 377.

Sections 2, 3 and 4 of Article 77 provide that "educational matters affecting the State and the general care and supervision of public education shall be entrusted to a State Department of Education, at the head of which shall be a State Board of Education" (Sec. 2); "educational matters affecting a County shall be under the control of a County Board of Education" (Sec. 3) and "educational matters affecting a school district shall be under the care of a District Board of School Trustees" (Sec. 4).

Sections 16 and 17 set forth the general supervisory and appellate powers of the State Board. These powers include:

1. The enforcement of the provisions of Article 77.
2. The determination of the educational policies of the State.
3. The enactment of by-laws for the administration of the public school system having the force of law.
4. The institution of legal proceedings if necessary to enforce Article 77.
5. The explaining of "the true intent and meaning of the law, and they shall decide, without expense to the parties concerned, all controversies and disputes that arise under it, and their decision shall be final".

6. The exercise, through the State Superintendent, of "general control and supervision over the public schools and educational interest of the State".

7. Consultation with and advice to "County boards of education" and other designated officials.

The State Superintendent, by Sec. 35, is charged with the enforcement of all provisions of Article 77 and the by-laws of the State Board.

Sections 46 to 71 of Article 77 contain the statutory provisions in regard to the County Boards of Education. These County Boards are required "to maintain a uniform and effective system of public schools throughout their respective Counties (Sec. 48). The County Superintendent of Schools is made the executive officer, secretary and treasurer of the County Board (Sec. 50). The County Board "shall to the best of its ability cause the provisions of this Article, the by-laws, and the policies of the state board of education to be carried into effect." Subject to Article 77, the by-laws and policies of the State Board, the County Board "shall determine, with and on the advice of the county superintendent, the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the schools" (Sec. 51). The County Board is required to "consolidate schools wherever in their judgment it is practicable, and to pay, when necessary, for the transportation of pupils to and from such consolidated schools."

The County Superintendent, as executive officer of the County Board, is required to "see that the laws relating to schools, the enacted and published by-laws of the State Board of Education and the rules and regulations and the policies of the county board of education are carried into

effect" (Sec. 143), and he "shall explain the true intent and meaning of the school laws, and of the by-laws of the State Board of Education. He shall decide, without expense to the parties concerned, all controversies and disputes involving the rules and regulations of the county Board of education and the proper administration of the public school system in the county, and his decision shall be final, except an appeal may be had to the State Board of Education if taken in writing within thirty days" (Sec. 144).

The statutory provisions in regard to the establishment of schools for white students are found in Sections 84 and 124 which provide that elementary schools "shall be free to all white youths between six and twenty years of age" and that "All white youths between the ages of six and twenty-one years shall be admitted into such public schools of the State, the studies of which they may be able to pursue; provided, that whenever there are grade schools, the principal and the County Superintendent shall determine to which schools pupils shall be admitted."

Sections 207 and 208 provided for the establishment of schools for colored students. By these Sections, the duty is placed upon the County Board "to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free * * *, provided, that the colored population in any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools; (Sec. 207) and that "schools for colored children shall be subject to all the provisions of this Article" (Sec. 208).

2. *Actions of the Attorney General of Maryland and of the State Board of Education Subsequent to the Second Opinion in the Brown Case.*

The Second Opinion in the *Brown* case, *Brown v. Board of Education of Topeka*, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, was filed on May 31, 1955.

The State Superintendent of Schools (Dr. Thomas G. Pullen, Jr.) very shortly after this decision requested an Opinion of the Attorney General of Maryland in regard to the effect of the *Brown* decision upon the provisions of the State Law requiring separation of the races in the public schools of Maryland.

On June 20, 1955, just twenty days after the filing of the second Opinion in the *Brown* case, the Attorney General of Maryland rendered a formal Opinion (published in the Daily Record of June 29, 1955) in which he stated that "* * * *all constitutional and legislative acts of Maryland requiring segregation in the public schools of the State of Maryland are unconstitutional and must be treated as nullities.*" (Emphasis supplied.)

The Attorney General also stated that even though the State of Maryland were not a formal party to the *Brown* and companion litigation, "*We do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make 'a prompt and reasonable start' toward the ultimate elimination of racial discrimination in public education.*" Report and Official Opinions of the Attorney General, (of Maryland) Vol. 40, page 175.

The State Board did not defy or seek to evade this opinion of the Attorney General of Maryland.

On the contrary, *two days later,* on June 22, 1955, the State Board passed a Resolution, in which, after various recitals, it stated:

> "Now that the Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education *calls upon* the local public school officials *to commence this transition at the earliest practicable date, with this view of implementing the law of the land.*" (Emphasis supplied.)

In the same resolution the Staff of the State Board is directed to cooperate with the local public school officials "to give effect * * * in the process of the transition from segregation to desegregation" and states that it "trusts that all citizens will exercise patience and tolerance *to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.*" (Emphasis supplied.)[2]

3. *Actions by the Board of Education of Harford County Subsequent to June 22, 1955.*

Eight days after the Opinion of the Attorney General of Maryland of June 20, 1955 and thirty days after the filing of the Second Opinion of the Supreme Court of the United States in the *Brown* case, the Board of Education of Harford County (hereinafter referred to as the "County Board") on *June 30, 1955* selected a Citizens Consultant Committee

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[2] Judicial notice may be taken of the fact that there have been two meetings of the General Assembly of Maryland since the Opinion of the Attorney General was promulgated, the "Short" Session of 1956 and the "Regular" Session of 1957 and that there were no Acts passed which attempted in any way to overrule or circumvent the Opinion of the Attorney General that any Maryland Constitutional or Statutory provisions requiring segregation in the public schools were nullities.

of 36 members from all sections of Harford County, 5 of whom were colored citizens, to consider the problem of desegregation of the Harford County public schools and to make recommendations to the County Board.

On July 27, 1955 a group of colored parents petitioned the County Board "to take immediate steps to reorganize the public schools under your jurisdiction on a non-discriminating basis."

The Citizens Consultant Committee held its first meeting on August 15, 1955, divided into Sub-Committees to consider (1) facilities, (2) transportation and (3) social relationship. A member of the Staff of the County Board served as a consultant to each sub-committee. These Sub-Committees met at various times during the remaining portion of 1955 and during January and February, 1956.

On February 27, 1956, the Citizens Consultant Committee held a meeting at which all of the Sub-Committees presented their final reports. None of the specific recommendations in those reports was adopted by the full Committee which *unanimously* adopted the following resolution.

> "To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions *to be granted* by the Board of Education in accordance with *such rules* and *regulations* as it *may adopt* and *in accordance with the available facilities in such schools;* effective for the school year beginning September, 1956." (Emphasis supplied.)

The Resolution of the Citizens Consultant Committee was adopted by the County Board on March 7, 1956.

On March 9, 1956, Civil Action No. 8615, *Moore, et al v. Board of Education of Harford County, et al*, which had been filed on November 29, 1955, came on for hearing on the Defendants' Motion to Dismiss. In this suit it was alleged that the County Board had "refused to desegregate the schools within its jurisdiction and had not devised a plan for such desegregation." The Plaintiffs were children, the four infant Original Plaintiffs in the case at bar with 17 other colored children through their parents and next friends. In Civil Action No. 8615 the Plaintiffs prayed (1) for a speedy hearing of their application for a preliminary and for a permanent injunction; (2) for a preliminary and permanent judgment that any orders, customs, practices and usages pursuant to which the Plaintiffs are segregated in their schooling because of race violate the Fourteenth Amendment; and (3) that the Court enter a preliminary injunction ordering the Defendants to promptly present a plan of desegregation to the Court which will expeditiously desegregate the Harford County schools and enjoin the Defendants from requiring the Plaintiffs and all other Negroes of public school age to attend or not to attend such public schools because of race.

In the Defendants' Motion to Dismiss the Complaint, the failure of the Plaintiffs to exhaust their administrative remedy by way of appeal to the State Board was alleged.

Counsel for the Defendants brought the Resolution of the County Board of March 7, 1956 to the attention of Counsel for the Plaintiffs and to the Court, and relying on the Resolution, the Plaintiffs dismissed Civil Action No. 8615.

On June 6, 1956 the County Board adopted a "Transfer Policy", (App. 8a-9a), which was duly advertised in the local newspapers. This "Transfer Policy" provided that if a child desired to attend a school other than the one in

which he was enrolled or registered, his parents must request a transfer between June 13 and July 15, 1956, stating the reason for the transfer and bearing the approval of the principal of the school the applicant was then attending. It provided that:

> "While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason."

The County Board stated in the "Transfer Policy" that it would finally consider the application for transfer at its meeting of August 1, 1956. Children whose applications were approved, were required to enroll on the regular summer registration date, August 24, 1956. Sixty colored students filed applications for transfer.

On August 1, 1956, the County Board adopted a "Desegregation Policy". This Resolution recited the appointment of the Citizens Consultant Committee, the recommendation of that Committee, the Resolution adopted by the County Board on March 7, 1956 and the "Transfer Policy" of June 6, 1956. It then provided:

> "The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

In accordance with the Desegregation Policy, 15 of the 60 applications were granted, and 45 applications, including those of the 4 original infant Plaintiffs in the case at bar, were refused. On August 7, 1956, the County Superintendent of Schools, Charles W. Willis, notified the respective parents of the infant Plaintiffs in writing of the adoption of the Desegregation Policy (enclosing a copy) and advised them that "under the provisions of this policy your child

will not be allowed to transfer from his present school", and that the County Board had refused "your request for a transfer" (App. 11a).

No appeal to the State Board from the action by the County Superintendent was taken by the infant Plaintiffs or their parents or by any of the other applicants whose applications were refused.

On August 28, 1956, the complaint in the present suit, Civil Action No. 9105 (R. 3-8), was filed by the Original Plaintiffs, the infants Stephen Moore, Jr., Dennis Spriggs, Roslyn Slade and Patricia Garland, on behalf of themselves and all Negroes similarly situated, against the County Board and the County Superintendent of Schools. Moore sought transfer from Central Consolidated Elementary School in Hickory to the elementary school in Bel Air, where he resides; Spriggs from the Hickory School to the Junior High School in Edgewood, where he resides; Slade and Garland from Havre de Grace Consolidated School to Aberdeen High School, in the 9th and 11th grades respectively. They prayed for (1) advancement of the cause on the docket and (2) that the Court enter preliminary and permanent judgments that any "orders, customs, practices and usages pursuant to which said plaintiffs are each of them, their lessees, agents and successors in office from denying to plaintiffs and other Negro residents of Harford County of the State of Maryland admission to any Public School operated and maintained by the Board of Education of Harford County, on account of race and color" (R. 8).

On September 18, 1956, the Defendants filed a Motion to Dismiss (R. 9-12) substantially similar to the one filed in Civil Action No. 8615, including the point that the Plaintiffs had not exhausted their administrative remedy by appeal to the State Board (R. 9). A pre-trial conference was held

by Judge Thomsen on October 2, 1956, and on October 5, 1956, Judge Thomsen overruled the Motion to Dismiss without prejudice to the Defendants to raise the same points in their Answer (R. 13). The Defendants answered on October 14, 1957, setting up the defenses in the Motion to Dismiss as well as answering the allegations of the Complaint (R. 14-24).

4. *Hearing of November 14, 1956.*

The case was set for hearing on November 14, 1956. At this hearing both the Plaintiffs and Defendants offered oral testimony and introduced documentary exhibits.

The Sub-Committee Reports of the Sub-Committees on (1) Facilities (App. 40a-44a; R. 317-322), (2) Transportation (R. 337-338) and (3) Social and Recreational Aspects (R. 339-340) were offered in evidence by the Plaintiffs. These were objected to by Counsel for the Defendants on the grounds that they were preliminary reports of Sub-Committees, which were not adopted by the *full* Committee and were merged in the Report of the full Committee (Appellees' App. 1-2). They were marked for identification as Plaintiffs' Exhibit 1-A, B, C (and D) and were admitted in evidence by the District Court only for the limited purpose of showing "the field of study covered by the Sub-Committees of the General Committee" (Appellees' App. 4; 8).[3]

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[3] Although none of the Reports of the Sub-Committees has any legal or other effect, it is interesting to note that the recommendations of each Sub-Committee were quite different and none was adopted either by the full Committee or by the County Board. The Sub-Committee on Facilities "was of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-1957" (App. 44a; R. 322) without specifying the basis for such admission; the Sub-Committee on transportation recommended "that integration be a planned, gradual procedure — one grade a year is suggested" (R. 338); the Sub-

Mr. Willis testified that both ne and the County Board were familiar with the Opinion of the Attorney General of Maryland of June 20, 1955, and the Resolution of the State Board dated June 22, 1955; they understood that their effect on the laws of Maryland requiring or permitting segregation in the Public School System of Maryland was to make those laws "null and void" (Appellees' App. 10). He further testified that neither he nor the County Board had any intention not to comply with the Resolution of the State Board of June 22, 1955 (Appellees' App. 10) and then described the selection and appointment of the Citizens Consultant Committee. Of the 36 members, 5 members were Negroes — "presidents of Parent-Teachers Association, head of a national association for the protection of Colored People, people from various sections of the County, a Doctor from Havre de Grace * * *" (Appellees' App. 11-12). Mr. Willis then described the advertising for applications for transfers and the adoption by the County Board of the "Desegregation Policy" of August 1, 1956. Mr. Willis stated that he believed that he and the County Board had "made a reasonable start in good faith to carry forward the integration of the public schools in Harford County"; that the process would continue "based upon the experience obtained by the first year of operation under the plan"; and, that he and the County Board "have made a reasonable start toward the complete integration of the schools of Harford County in a reasonable time with deliberate speed and that this will be accomplished in a gradual and orderly manner" (Appellees' App. 15-16). He also testified that

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Committee on Social and Recreational Aspects recommended that "ability be considered in the grouping of all children, but that no class, for which children of both races are available, be of one race with the exception of elective courses. That the absorption of the colored pupils be in all schools and roughly on a 10 per cent basis, provided no hardship of long transportation be placed upon any pupils" (R. 339).

he was not "relying on any State law, statute, order, regulation, custom or usage which purports to require or permit continued segregation of the races in the public schools of Harford County" (Appellees' App. 16).

Judge Thomsen pointed out that he "hadn't heard Mr. Willis' good faith questioned" (Appellees' App. 16) and that "there is no question of inequality of facilities" (Appellees' App. 19).

Mr. Willis described the organization of the school system in Harford County — a six-three-three system —, that is, six years of elementary school, three years junior high school and three years of senior high school. The facilities, transportation problems and other factors were described by Mr. Willis (Appellees' App. 16-21).

David G. Harry, President of the County Board, confirmed the testimony of Mr. Willis as correct, his familiarity and that of the County Board with the Opinion of the Attorney General of June 20, 1955, the Resolution of the State Board of June 22, 1955, the effect of the Opinion and Resolution in making the Maryland laws requiring or permitting segregation in the public schools "null and void", and the intention of the County Board to comply with the Resolution of the State Board of June 22, 1955 (Appellees' App. 21-22). He understood that in promulgating the "Transfer Policy" of June 6, 1956 and the Desegregation Policy" of August 1, 1956, he was carrying out the Resolution of the County Board adopted March 7, 1956 (Appellees' App. 22). He also stated that he believed that the County Board had made a "reasonable start in good faith to carry forward the integration policy in the Harford County public schools, the plan adopted by the County Board had been "very successful thus far", the County Board intended to continue the integration of additional grades based on experience

obtained in the first year of operation under the Plan, and that the County Board has "made a reasonable start toward completing the integration of the schools of Harford County within a reasonable time and with deliberate speed" and that "this will be accomplished in a gradual and orderly manner" (Appellees' App. 22-23).

Ernest Volkart, United States Commissioner, and Chairman of the Citizens Consultant Committee, testified in regard to the meeting of that Committee on February 27, 1956 (Appellees' App. 26). He prepared the Resolution of the full Committee of February 27, 1956, and stated that his understanding of the practical effect of that Resolution as the Committee and he understood it:

> "* * * was that the change which had taken place under the Supreme Court ruling would have to be in a measure gradual and that the Citizens Committee could not prescribe any specific pattern, and that the resolution speaks for itself in that the School Board must make rules and regulations to integrate the schools gradually and consistent with the best interests of our citizens of Harford County" (Appellees' App. 27).

He stated that "the recommendations of the various Sub-Committees" were not "adopted by the full Committee". He thought that the actions of the County Board in adopting the Transfer Policy of June 6, 1956, and the Desegregation Policy of August 1, 1956, were "consistent with and in furtherance of the resolution of the Citizens Committee of February 27th, 1956" (Appellees' App. 27).

As a result of that hearing, Judge Thomsen filed an Opinion on November 23, 1956 (App. 4a-15a), 146 F. Supp. 91, in which he concluded (1) that the appointment of the Citizens Consultant Committee in the Summer of 1955, its study and recommendation and the Resolution of March 7, 1956,

were "a prompt and reasonable start" toward compliance with the ruling in the *Brown* case and (2) that the Plaintiffs must exhaust their administrative remedy by appeal to the State Board on or before December 15, 1956 (App. 15a). He intimated no opinion as to the sufficiency or propriety of the Desegregation Policy of August 1, 1956. Further proceedings in the case at bar were stayed pending the Appeal to the State Board.

5. *Proceedings Before the Maryland State Board of Education.*

On December 6, 1956, two of the Original Infant Plaintiffs in the case at bar, Stephen Moore, Jr., and Dennis Spriggs, and 10 additional children, Robert McDaniel, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, Maurice L. Horsey, III, David Roland Bell, James J. Bell, Jr., and Aurelia H. Boose, took an appeal to the State Board from the action of the County Superintendent of August 7, 1956 (R. 373). The Appeal of Aurelia H. Boose was withdrawn as she was not in Maryland at the time of the hearing before the State Board (Appellees' App. 61).[4]

At the hearing before the State Board on February 27, 1957, both parties were represented by Counsel and elaborate oral testimony and documentary evidence were offered (R. 399-534). Alexander Harvey, Assistant Attor-

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[4] Of the remaining 9 additional children, 8 were permitted to intervene in the case at bar (R. 51) over the objection of the Defendants (R. 48-50). These Intervenors were: Earlene Scott, Mona Leisia Scott, Robert McDaniel, David Roland Bell, Bernard Samuel Blackstone, Ellen Elizabeth Blackstone, Larry Wilson Blackstone and Maurice L. Horsey, III. The present Appellants are 6 of the Intervenors, *i.e.*, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Blackstone, Ellen Elizabeth Blackstone and Maurice L. Horsey, III, and 1 of the Original Plaintiffs, Roslyn Slade, who did not, however, appeal to the State Board.

ney General of Maryland was also present to advise the State Board (Appellees' App. 60). The President of the State Board is Wendell D. Allen, a prominent Baltimore Attorney. William A. Gunter, a distinguished Attorney from Western Maryland is a member of the State Board, as is also Dr. Dwight O. W. Holmes, an eminent colored educator, and President Emeritus of Morgan College (Appellees' App. 59). All of the members of the State Board participated actively in the hearing.

The Appellants before the State Board offered the testimony of parents of some of the infants involved — Mr. Moore (R. 400-411), Mr. Spriggs (R. 420-427), and the Reverend Mr. Scott (R. 430-440). Certain documents were introduced into evidence (R. 412-414).

Mr. Willis, on behalf of the County Board, reviewed his educational qualifications (Appellees' App. 61); the prior history of what the County Board did in regard to the Opinion of the Attorney General of June 20, 1955, by the appointment of the Citizens Consultant Committee, the Resolution of the County Board of March 7, 1956, the Transfer Policy of June 14, 1956 and applications for transfer filed thereunder, and the Desegregation Policy of August 1, 1956 (Appellees' App. 62-63).

Mr. Willis then outlined the considerations which the County Board considered in formulating its Desegregation Policy of August 1, 1956. These were in brief: (1) the likelihood of successful application of the desegregation policy in Edgewood and Aberdeen, where there were Army bases, and a "desegregated" atmosphere; (2) the wisdom of beginning the desegregation program with the younger children in the lower grades (a) where social problems were not so great and (b) both white and colored pupils would have the same educational program and background

and could progress together from grade to grade; and (c) the available school facilities. In regard to this latter consideration, Mr. Willis pointed out that there had been a 100% increase in the Harford County school population in the past 10 years (from approximately 7,000 to 14,000) during which period the County Board has spent approximately $14,000,000 for school construction. The County Board has a $3,000,000 building program projected, one-half for 1957 and the other half for 1958. The only elementary schools which had available facilities for the desegregation program on August 1, 1956, were Edgewood and Aberdeen, and Perryman, where there were no applications, and Darlington, in a very rural area, where there was only one application (Appellees' App. 63-66).

The County Board's "Extension of the Desegregation Policy for 1957-1958", adopted February 6, 1957, was brought to the State Board's attention. This Resolution, in effect, extended desegregation to all of the elementary schools and all classes in those schools for the school year 1957-1958 which were not more than 10% overcrowded as of February 1, 1957. Mr. Willis explained that schools which are 10% overcrowded as of February 1, 1957, would be from 16% to 20% overcrowded in the fall of 1957, the beginning of the 1957-1958 school year. The normal class size was based on an average of 30 pupils for each class room. This is in accordance with the State and National Standard (App. 33a). The building program would eliminate all of the overcrowding in the elementary schools by September, 1958, if there were no unforeseen developments in the building program (Appellees' App. 68). Mr. Willis pointed out that the new Junior College at Bel Air would be opened in September, 1957, on a desegregated basis (Appellees' App. 68).

Mr. Willis stated that the County Board had moved forward in the desegregation of the public schools of Harford County "on a reasonable basis" and "with all practicable and deliberate speed" (Appellees' App. 68).

Mr. Harry, the President of the County Board, confirmed the testimony of Mr. Willis (Appellees' App. 69).

On March 4, 1957, the State Board by a *unanimous decision* dismissed the appeals, finding that (1) the County Board had acted within the policy established by the State Board, (2) the County Superintendent had acted in good faith within the authority set forth in the Desegregation Policy adopted on August 1, 1956, by the County Board; (3) that the Desegregation Policy of August 1, 1956, was adopted in a bona fide attempt to make a reasonable start toward desegregation of the Harford County public schools; (4) that the initial efforts had been carried out without any untoward incidents (Appellees' App. 70-76).

The State Board also took cognizance of the Resolution of the County Board of February 6, 1957, entitled "Extension of the Desegregation Policy for 1957-1958", (which had been passed by the County Board pending the appeal to the State Board and which will be considered below) and of the testimony that the proposed Harford County Junior College to be opened in Bel Air in the fall of 1957, would be opened on a desegregated basis, as well as the testimony that the present program of new buildings and additions will make further desegregation possible (Appellees' App. 75-76).

6. *Action of the County Board on February 6, 1957.*

As above pointed out, the County Board, on February 6, 1957, passed a Resolution for "Extension of the Desegregation Policy for 1957-1958". In effect, it extended desegre-

gation to *all* grades of *all* the elementary public schools in Harford County where space was available. It further provided:

> "Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.
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> "All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

7. *Hearing in the District Court on April 18, 1957.*

After the decision of the State Board on March 4, 1957, Judge Thomsen held a second pre-trial conference on March 29, 1957. A hearing was held before Judge Thomsen on April 18, 1957. Again oral testimony was taken and documentary evidence offered, including the proceedings before the State Board.

Mr. Willis testified fully in regard to the School System generally in Harford County and in particular in regard to the individual schools — the ones which are overcrowded and to what extent, as well as other relevant details (Appellees' App. 28-37).

8. *Hearing in the District Court on June 11, 1957.*

Judge Thomsen had indicated that the Plan of the County Board was generally acceptable for elementary schools, but that he was doubtful about postponing desegregation completely in the High Schools until normally accomplished by the Plan's operation in the elementary schools with promotions to the High Schools in regular course. Judge Thomsen suggested that the parties try to agree on some plan for the High Schools during the transition period. This was attempted but Counsel for the Plaintiffs would not agree on any limitation of any number of colored pupils in the High Schools but insisted that "the Plaintiffs and the class they represent should be admitted to the High Schools without any racial restrictions whatsoever" (Appellees' App. 78).

The County Board modified its Desegregation Plan for the High Schools of Harford County during the interim period by providing for applications for transfers to High Schools near the applicant's home to be approved or disapproved on the "basis of probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (Appellees' App. 79).

Mr. Willis explained the practical operation of the Modification (Appellees' App. 42-49).

9. Opinion of June 20, 1957 and Judgment of July 3, 1957.

Judge Thomsen filed his Second and final Opinion on June 20, 1957 (App. 16a-25a). Based on that Opinion, Counsel for the Plaintiffs prepared a proposed form of Judgment (to the form of which Counsel for the Defendants interposed no objection), and this Judgment was signed and filed on July 3, 1957 (App. 1a-3a).

The Appellants noted their Appeal from the Judgment of July 3, 1957 on July 25, 1957 (R. 587).

ARGUMENT

The Findings by the District Court (Thomsen, C.J.) that the County Board had Made a Prompt and Reasonable Start Toward the Desegregation of the Public Schools of Harford County and that Additional Time was Necessary to Effectuate Such Desegregation as Set Forth in the Judgment of July 3, 1957, Were not Clearly Erroneous.

There seems to be no contention by the Appellants that the District Court did not recognize and apply the applicable law. They contend that the District Court erred in concluding that the Appellees met the burden of showing the necessity for limited delay incident to the Desegregation Plan set forth in the Judgment of July 3, 1957. This Appeal, therefore, essentially presents an alleged error involving a finding of fact. It is well established by Rule 52(a) of the Federal Rules of Civil Procedure and by the decisions of the Supreme Court of the United States and of this Court[5] that the Appellants must establish that the

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[5] *U.S. v. National Association of Real Estate Boards*, 339 U.S. 485, 70 S. Ct. 711, 94 L. Ed. 1007 (1950 — Douglas, J.) and see other Supreme Court cases cited by Mr. Justice Douglas at page 495 of 339 U.S. 485.

New York Life Ins. Co. v. Tobin, 177 F. 2d 176 (1949 — C.A. 4th, Per Curiam) and cases cited on page 177 of the Opinion.

findings of the District Court were "clearly erroneous" in order to obtain a reversal.

It would perhaps have been sufficient for the Appellees merely to refer to the careful and comprehensive Opinions of the District Court — the Opinion of November 23, 1956 and of June 20, 1957 (App. 4a-25a) — and the Judgment of July 3, 1957 itself, to show that the findings of the District Court were not clearly erroneous, but were clearly in accord with the great weight of the evidence. Indeed, these Opinions and the facts show that the District Court went beyond the requirements of the applicable law with a view to expediting the progress of desegregation in the public schools of Harford County and the protection of the constitutional rights, not only of the colored pupils as a class, but also of individual plaintiffs involved in the litigation.[6] The public importance of the case, not only to

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[6] The Appellants properly point out in their Brief (page 2) that the "estoppel" phase of the suit is not at issue in the case at bar. This is because the Appellees did not file a Cross-Appeal. The determination of the County Board not to file a Cross-Appeal to raise this issue was deliberate. The County Board does not wish to be thought to acquiesce in the District Court's determination that its Desegregation Policy of August 1, 1956, was not in accord with and consistent with its Resolution of March 7, 1956. On the contrary, it was, and is, the position of the County Board that the intention and understanding of the draftsman of the Resolution, Mr. Volkart, was to leave the *granting* of any applications for transfer in the hands of the County Board without specific recommendations, but in accordance with the rules and regulations of the County Board and with available facilities. This was the understanding of Counsel for the County Board, the President of the County Board, and County Superintendent. This understanding is in accord with the language of the Resolution of March 7, 1956, itself. Then too, if the Plaintiffs in Civil No. 8015, had not voluntarily dismissed the Complaint, it would have been dismissed — or at least postponed substantially — because the Plaintiffs had not exhausted their administrative remedy by appeal to the State Board. There was, therefore, no real prejudice to the Plaintiffs by the voluntary dismissal of the Complaint in Civil No. 8015. It would not have been "inequitable" to have required the Infant Plaintiffs Moore and Spriggs to have complied with the Plan applicable to others in

Harford County, but to the people of the State of Maryland generally, seemed to require a full consideration of the background, both Statutory and administrative, of the case and all of the applicable facts in the particular case.

The decision of this Court in this case is of more than passing importance. It is of particular importance to the entire problem of desegregation throughout the United States. Maryland is a border State, which from the beginning of its State-wide educational system in 1865 has had separation of the races in the public school system. This continued until 1955, a period of 90 years. The system of "separate but equal" separate school facilities was instituted in 1872 and continued until 1955, a period of 83 years. There has been no defiance of the decision in the *Brown* case in Maryland. On the contrary, both the political and administrative officials of the State have officially acted to require compliance with that decision with more than "deliberate speed". In the case at bar, it is conceded that the County Board has acted in good faith to desegregate the public schools in Harford County. The State Board — the highest administrative educational authority in the State — has approved the County Board's action after a full and careful hearing. There has been no conflict be-

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their situation, particularly as there is no question that the school facilities which they enjoy are equal — if not superior — to those which are provided in Paragraph 6 of the Judgment of July 3, 1957. The District Court indicated that if an appeal or cross-appeal were taken by the County Board he would not supersede the operation of the Judgment of July 3, 1957, pending appeal. Under these circumstances, the County Board decided that it *would be inequitable* to displace the infant Plaintiff Moore from the sixth grade at the Bel Air School and the infant Plaintiff Spriggs from the eighth grade at Edgewood High School in the course of a school year even if the County Board were successful in a cross-appeal, particularly in view of the nature of the general Plan adopted by the County Board and incorporated in the Judgment of July 3, 1957. It was for this reason alone that a cross-appeal was not taken.

tween the Federal Courts and State officials. There has been no untoward incidents arising in Harford County as a result of the Plan. An affirmance of Judge Thomsen's decision by this Court may well point the way to a rational, equitable and practical solution to the difficult problems posed in many other localities by the *Brown* decision.

Judge Thomsen's decision is also of more than judicial importance in view of the unusual, if not unique, circumstance that before his appointment as District Judge, he was President of the Board of School Commissioners of Baltimore City — or as he modestly puts it — "I have had some experience with School Boards" (Appellees' App. 10). His decision has the added value of his administrative experience as the head of the local governing body of the public school system of one of the largest cities in the United States.

The law governing the case appears in the Second Opinion of the Supreme Court of the United States in *Brown v. Board of Education of Topeka*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (May 31, 1955, Warren, C.J.) and in the decisions of this Court in *Carson v. Board of Education of McDowell County*, 227 F. 2d 789 (1955, Per Curiam); *Hood v. Board of Trustees of Sumter County School District No. 2*, 232 F. 2d 626 (1956, Per Curiam); *Carson v. Warlick*, 238 F. 2d 724 (1956, Parker, C.J.) and of the Three-Judge Court, composed of Chief Judge Parker, Circuit Judge Dobie and District Judge Timmerman, in *Briggs v. Elliott*, 132 F. Supp. 776 (1955, Per Curiam).

In their Brief, page 9, the Appellants seek to narrow substantially the effect of the Second Opinion in the *Brown* case. *All of the language* of Chief Justice Warren's Opinion is important. He stated for the Supreme Court that:

"Full implementation of these constitutional principles *may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems;* courts will have to consider whether the action of school authorities *constitutes good faith implementation of the governing constitutional principles.* Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts." (Emphasis supplied.) 349 U S. at page 299.

"In fashioning and effectuating the decrees, the courts will be guided by *equitable principles.* Traditionally, equity has been characterized by a *practical flexibility in shaping its remedies* and by a facility for *adjusting and reconciling public and private needs.* These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools *as soon as practicable on a nondiscriminatory basis.* To effectuate this interest may call for *elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.* Courts of equity *may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner.* But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." (Emphasis supplied.) 349 U.S. at page 300.

"While giving weight to these public and private considerations, the courts will require that the defendants make a *prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an*

effective manner. The *burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.* To that end, the courts *may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts* and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the *adequacy of any plans* the *defendants may propose* to meet these problems and to *effectuate a transition* to a racially *nondiscriminatory* school system. During this period of transition, the courts will retain jurisdiction of these cases." (Emphasis supplied.) 349 U.S. at page 300.

This Court, in the Opinions mentioned, has established that:

1. That if a proper administrative remedy is provided by the State Law, the Plaintiffs in this type of case must exhaust that remedy and "the Courts of the United States will not grant injunctive relief until administrative remedies have been exhausted." 227 F. 2d at 790. (To the same effect 238 F. 2d at 727; 232 F. 2d at 626.)

2. "The federal courts manifestly cannot operate the schools." (227 F. 2d at 790) and the *Brown* decision did not provide "that the federal courts are to take over or regulate the public schools of the States" (132 F. Supp. at 777).

3. Interference by injunction with the schools of a state is as grave a matter as interfering with its fiscal operations and should not be resorted to 'where the asserted federal right may be preserved without it' " (227 F. 2d at 791).

4. Nothing in the Constitution of the United States or in the decision in the *Brown* case "takes away from the people

freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action" (132 F. Supp. at 777).

In the Second Opinion of the Supreme Court, it is pointed out, in effect, that *all* matters and problems which affect the school system *as a system* and which result or may result from the change-over to a desegregated system, may be considered and evaluated by the local school authorities in formulating plans and in determining the time of completion so long as the local board (a) acts in good faith and (b) there is no attempt to resist the application of the Constitutional principles involved (1) entirely or (2) for an unreasonable time. The Supreme Court clearly indicates that the judgment of the local school authorities is to be given great weight.

The West Virginia District Court cases on specific plans (cited on page 10 of the Appellants' Brief) are not very helpful as the background and particular facts in each case are quite different. Essentially each case stands on its own facts so far as a specifis plan is concerned. Three of the cases cited by the Appellants arose in jurisdictions in which the State and Local authorities were actively resisting *any* desegregation of the public schools *at any time*, had made no start, reasonable or otherwise, and in which no effort had been made to meet the burden upon the local authorities to establish the need for additional time to complete the desegregation program.[7] It is well settled, however, that

[7] *School Board of the City of Charlottesville, Va. v. Allen*, 240 F. 2d 59 (1956, CA-4 — Parker, C.J.) cd. 353 U.S. 910.

School Board of the City of Newport News, Va. v. Atkins, 246 F. 2d 325 (1957, CA-4 — Per Curiam).

Jackson v. Rawdon, 235 F. 2d 93 (1956, CA-5 — Hutcheson, C.J.).

a gradual, grade-by-grade, method of implementing a bona fide desegregation plan is in accordance with the Supreme Court's Second Opinion in the *Brown* case. *Aaron v. Cooper*, 243 F. 2d 361 (CA-8, 1957, Vogel, Ct. J.).

What then was the factual situation in regard to the public school system in Harford County?

Harford County is predominantly a rural County. There are two large government reservations in the southern end of the County — Aberdeen Proving Ground at Aberdeen and the Army Chemical Center at Edgewood. On the government reservations, the housing developments are operated on a non-segregated basis.

In accordance with the Maryland law and policy prior to 1955, the Harford County public school system provided "separate but equal" school facilities for white and colored students as permitted by the Opinion of the Supreme Court of the United States in *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896, Brown, J.). At the time of this suit, the County Board provided two large "consolidated" schools for approximately 1100 colored students, comprising elementary, junior high and senior high school classes at Hickory and at Havre de Grace. This was in accord with the County Board's 6-3-3 system, that is, 6 years of elementary school, 3 years of junior high school and 3 years of senior high school. The same system was provided for approximately 12,600 white students. There were 18 white elementary schools[8] and 5 high schools, comprising junior and senior high schools, at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen and Havre de Grace.

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[8] Emmorton, Edgewood, Aberdeen, Halls Cross Roads, Perryman, Churchville, Youth's Benefit, State Ridge, Darlington, Havre de Grace, Old Post Road, Bel Air, Highland, Forest Hill, Jarrettsville, Dublin, 6th grade at Aberdeen High School and sixth grade at Edgewood High School.

It is conceded that the school facilities for the colored students were equal if not superior to the facilities for the white students. Cf. *Willis v. Walker*, 136 F. Supp. 177 (1955, W.D. Ky., Swinford, D.J.) at page 179.

The students, both white and colored, were transported free of charge to their schools unless they lived within walking distance of the respective schools. White students were required to attend the nearest white school and colored students the nearest colored school.

There were white teachers in the white schools and colored teachers in the colored schools.

During the past 10 years, the school population has increased 100% (from approximately 7,000 to 14,000) and the County Board has spent during that period approximately $14,000,000.00 for school construction. To relieve overcrowding and care for additional students, the County Board has a $3,000,000.00 building program, one-half for 1957 and the other half for 1958.

As pointed out in the Supplementary Statement of the Facts, the Attorney General of Maryland and the State Board moved with *haste* (rather than "deliberate speed") to announce the change in the long established Maryland policy in regard to separation of the races in the public schools. The County Board moved with great expedition to select the Citizens Consultant Committee, that is, on June 30, 1955, just 1 month after the filing of the Second Opinion in the *Brown* case. Although the colored students only amount to approximately 10% of the entire school population, 5 of the 36 members of the Citizens Consultant Committee, approximately 14% of the entire membership, were representative Negroes holding important positions or having a professional status. This Committee met

promptly on August 15, 1955 and subdivided into Sub-Committees which studied the problems involved. The Sub-Committees presented their final reports at a meeting of the full Committee on February 27, 1956; none of the recommendations in the reports of the Sub-Committees was adopted, but the Resolution of February 27, 1956 was unanimously adopted by the *full* Committee, in effect leaving the granting of applications to the judgment and discretion of the County Board. The County Board, 8 days later, adopted the same Resolution.

Judge Thomsen held that these actions constituted a prompt and reasonable start toward compliance with the Supreme Court's ruling (App. 15a). They were most certainly prompt. They were entirely reasonable. There is no evidence to the contrary.

Well before the beginning of the school year for 1956 (September 1956), the County Board on June 6, 1956 adopted its Transfer Policy, advising of the right to file applications for transfer to other schools, but specifically indicating that it reserved the right "during the period of transition to delay or deny the admission of a pupil to any school if it deems such action wise and necessary for any good and sufficient reason."

The County Board adopted its "Desegregation Policy" on August 1, 1956, outlining its proposals for the desegregation of the schools in Harford County and its reasons for the Plan. The County Board pointed out that the Supreme Court's decision "provided for an orderly, gradual transition based on the solution of varied local school problems and that the Resolution of the Citizens Consultant Committee was in accord with that principle and left to the discretion of the County Board the "establishment of policies based on the assessing of local conditions of housing,

transportation, personnel, educational standards and social relationships". The County Board recited that studies in areas where complete desegregation had been practiced indicated a lowering of school standards that was detrimental to all children and that experience in other areas showed that bitter local opposition to desegregation in a school system "not only prevents an orderly transition, but also adversely affects the whole educational program." The County Board also pointed out that its first concern must always be that of providing the best possible school system for *all* of the children of Harford County." (Emphasis supplied.) The County Board concluded that it would be best to start the desegregation policy with younger children where social problems posed by desegregation could be solved with the least emotionalism. It selected the first three grades in Edgewood Elementary School and Halls Cross Roads Elementary School for the approval of applications of Negro pupils from colored to white schools, pointing out that there were already integrated housing developments in these areas and that, with the exception of 2 small schools, (in one of which there was one application, in the other, none) these were the only elementary buildings in which space was available at the present time. The County Board further stated that the future rate of expansion of the program depended upon the success of the initial steps.

The County Board, in accordance with the policy, approved 15 of the 60 applications for transfer received, or 25%, and rejected 45 applications.

The program was successful and on February 6, 1957 (again well in advance of the 1957-1958 school year beginning September 1957), the County Board substantially extended its desegregation policy by adopting a Resolution

entitled "Extension of Desegregation Policy for 1957-58" (App. 19a). This, in effect, provided for the acceptance of applications for transfer from pupils wishing to attend *all elementary schools* in *all classes* in the area in which they lived, if space were available. Space would be considered available in schools not 10% overcrowded, as of February 1, 1957. All capacities were based on the State and National standard of 30 pupils per class room (App. 33a).

Mr. Willis, the County Superintendent, pointed out that in the opinion of the County Board the adjustment of pupils transferring from a colored to a white school could be accomplished more smoothly and with better results for the education of the pupil involved if the transfer were made to a school which was not substantially overcrowded. Mr. Willis further pointed out that a school which was 10% overcrowded as of February 1, 1957 would be more overcrowded in September, 1957. In his judgment, the figures would be 5% to 10% higher in September, 1957 (Appellees' App. 37).

Mr. Willis summarized the factual situation in regard to the 7 schools which were overcrowded more than 10% as of February 1, 1957 (Appellees' App. 35-37), as follows:

Name of Elementary School	*Percentage of Overcrowding as of February 1, 1957*
Sixth grade at Eggewood	12%*
Old Post Road	24%
Forest Hill	17%
Bel Air	14%
Jarrettsville	10%
Highland	16%
Dublin	14%

*Mr. Willis pointed out that this school would be considerably overcrowded this year "because we will hold every child that is there and will bring in another sixth grade" (Appellees' App. 36).

The overcrowding in three of these Schools, Old Post Road, Bel Air and Highland, will be eliminated by September, 1958 and the overcrowding in the remaining four Schools, Forest Hill, Jarrettsville, Dublin and Sixth Grade at Edgewood High School, will be eliminated by September 1959 by the Building Program if there are no unforeseen circumstances arising in that Program. Summarizing the situation in the elementary schools by percentages, 61% of the elementary schools were desegregated in full as of September, 1957; 17% will be fully desegregated as of September, 1958; and, the remaining 22% will be fully desegregated as of September, 1959. Judge Thomsen held that the reasons given for this policy in regard to overcrowding were reasonable and that although this factor would not justify unreasonable delay, under the circumstances of this case, it justified that the one or two years delay in desegregating the 7 schools mentioned (App. 21a).

Judge Thomsen had indicated that although he was tentatively of the opinion that the desegregation for the elementary schools was reasonable and that the County Board had met the burden of proof in requiring the one to two years delay in the desegregation of the 7 schools mentioned, he was tentatively of the opinion that there could be some acceleration in the desegregation program so far as the high schools were concerned. He suggested that Counsel for the respective parties attempt to agree upon some reasonable plan for the interim period.[10]

[10] It should be kept in mind that the Harford County plan for desegregation would have worked automatically after the elementary schools were desegregated, as a colored student at one of the former white elementary schools would automatically proceed into the same junior high school as a white student in the same class. The entire high school system would thus be desegregated automatically by 1963 at the latest date, assuming that the County Board did nothing further in regard to its desegregation policy.

The Appellants make much of the fact that in June, 1955 there were only 60 applications for transfer and seek to use this figure as the number of applications which would inevitably be filed. It is significant, however, to note that although requested by the District Court to seek to reach an agreement on the question of admissions during the interim period, Counsel for the Appellants *refused to make any agreement as to the number of applications during the interim period* (Appellees' App. 78). In other words, the Appellants insisted that the matter be left entirely open to *any number* of colored pupils who might apply during the interim period. Obviously, the County Board could not undertake this type of program, as it might well have resulted in the complete disruption of the entire school system if there were a substantial number of applications for transfer from the colored high schools to the white high schools during the interim period. There would obviously be disruption of the transportation system, the classrooms, the teaching staff, both in the white and colored high schools, as it must be remembered that the colored teachers and principals in the colored high schools must also be considered in the entire problem. Even more importantly, a transfer from a colored elementary school to a white high school would cause the colored child to face problems which do not arise if that child had normally proceeded from the elementary school to the junior high school in regular course. As pointed out by Mr. Willis and also in Judge Thomsen's Opinion of June 20, 1957 (App. 22a), after a year or so in the high school, social groups, athletic groups and subject interest groups had begun to crystalize, friendships and attachments have been made. A child transferring to the school from another high school does not have the support of the group with which he has passed through the elementary school. A colored pupil transferring to an

upper grade during the interim period would not have the benefit of his older brothers, sisters or cousins already in the school, or of his parents, relatives or friends who have been active in the Parent-Teacher Association. Mr. Willis also pointed out and the District Court found as a fact that high school teachers generally, with notable exceptions, are less pupil conscious and more subject conscious and are less likely than the teachers trained for elementary grades, to be helpful in readjustment. Judge Thomsen pointed out that the County Board had sound reasons for making the transition on a year to year basis so that most colored children would have a normal high school experience, entering in the seventh grade and continuing through the same school.

To meet the problem posed by the interim period, so far as the high schools were concerned, the County Board, notwithstanding the inability to reach an agreement with Counsel for the Plaintiffs in regard to the matter, modified its Desegregation Policy on June 5, 1957 which would permit any colored student wishing to transfer to a high school nearer his home, to apply between July 1 and July 15, 1957 for transfer for the year beginning September, 1957. Such an application would be evaluated on an individual basis by a Committee consisting of the high school principals of the two schools involved, the Director of Instruction and the County Supervisors working in those schools. The guides and standards set up for the Committee were:

> "These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and

achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (App. 19a-20a).

The County Board again stated that it "and its professional staff would keep this problem under constant and continuous observation and study".

Judge Thomsen found that these guides and standards were reasonable and further that he had confidence in the integrity, ability and fairness of the County Superintendent, Mr. Willis, and of the principals, supervisors and others who would make the decisions under his direction. In any event, the District Court retained jurisdiction so that if any applicant or his parents thought that the plan during the interim period was not being equitably or properly applied, a prompt hearing in the District Court could be obtained.

The two cases from the Sixth Circuit, *Clemons v. Board of Education of Hillsboro*, 228 F. 2d 853 (1956, CA-6, Allen, Ct. J., Stewart Ct. J., concurring, Miller, Ct. J., dissenting) and *Booker v. Tennessee Board of Education*, 240 F. 2d 689 (1957, CA-6, Allen, Ct. J., Shackelford Miller, Jr., Ct. J., dissenting), cited by the Appellants on page 11 of their Brief, are quite distinguishable from the case at bar. In the *Clemons* case, there was an attempt by the Local School authorities in Hillsboro, Ohio, by use of a gerrymandered school district to circumvent and frustrate the law of Ohio since 1887 prohibiting segregation in the public schools of that State. The District Court, however, declined an injunction and its judgment "continued for an indefinite period the violation of law carried out by the Board of Education" (228 F. 2d at 857). The *Booker* case involved Memphis State College in which it was *anticipated that there would be an overcrowding* if all persons qualified for admission were admitted without restriction. The Board of Education

provided for gradual admission of qualified negro students, but there was no limitation on white students, either non-residents of Tennessee or non-residents of Memphis. There was no building program to take care of any anticipated increase. These cases are obviously quite different from the case at bar.

The case at bar has more similarity to the case of *Aaron v. Cooper*, 243 F. 2d 361 (1957 — CA-8, Vogel, Ct. J.), which involved a gradual desegregation of the public schools in Little Rock, Arkansas, beginning in that case, however, in the 10th, 11th and 12th grades, in the fall of 1957, then in the 7th, 8th and 9th grades and then in the 6 elementary grades, the entire program to be completed by 1963. Not only are substantially all of the administrative, pedagogical and other problems set forth in the District Court's Opinion in that case (*Aaron v. Cooper*, 143 F. Supp. 855), present in the case at bar, but, in addition, the County Board in the present case had a predominantly *rural* county with transportation and other problems, which were not present in the metropolitan area of Little Rock. Then too, the County Board's Desegregation Plan in this case provides for transfers (to the High Schools) during the interim period which was not a feature in the Little Rock plan, so far as the Elementary Schools were concerned in Little Rock during the interim period there.

Circuit Judge Vogel, after considering the *Clemons* and the *Booker* cases, supra, as well as *Willis v. Walker*, supra, pointed out that each case must rest on its own particular facts. The problems are "varied" as the Supreme Court pointed out in the *Brown* case. Judge Vogel then stated at page 364 of 243 F. 2d:

> "It was on the basis of such 'varied' school problems that the Supreme Court in the second Brown decision remanded the cases there involved to the local District Courts to determine whether the school authorities

> who possessed the primary responsibility, have acted in god faith, made a prompt and reasonable start, and whether or not additional time was necessary to accomplish complete desegregation. The question of speed was to be decided with reference to existing local conditions. There is here unqualified basis for the District Court's conclusions that the proposed plan constitutes a good-faith, prompt and reasonable start toward full compliance with the Supreme Court's mandate. Accordingly, we cannot say, even if we were so minded, that the District Court's conclusions were entirely erroneous and should be set aside. Nor can we say that a gradual program of integration beginning at the high school level and ultimately encompassing all grades is an unreasonable one."

The Appellees suggest that in several of the cases decided in the Lower Courts, the problem of overcrowding has been treated not as a racial problem but as a spatial problem. The Appellants overlook the fact that *during the transfer period*, the racial and the spatial considerations are closely related in that the colored pupils already have "space" in the existing colored schools and there is not sufficient "space" during the interim period in the overcrowded white school to permit transfer from the colored to the white schools. The fact that if a few white students whose parents moved into Harford County, applied during a school year for admission to the white school in their neighborhood during the transfer period and would be admitted, as the law requires, does not indicate any racial discrimination as the white pupil has *"no space"* to occupy, whereas the colored pupil has *his space* in the colored school. Counsel for the Appellants have never been willing to agree on *a number* of applications for transfer during the interim period. It cannot be assumed that the applications for transfer will necessarily be a small number. The

County Board in its Desegregation Policy has always sought to have the granting of the applications operate on an automatic or "policy" basis rather than to have each individual case considered specially. There are obvious administrative and other advantages to this type of system rather than to have each individual case evaluated on an individual basis. It adopted the individual basis procedure for High Schools during the interim period to take care of any individual case indicating a desirable transfer during that interim period.

Not only have the Appellants not challenged the good faith of the County Board and the County Superintendent, but the facts in the case at bar indicate overwhelmingly that these local school officials have made a sincere, honest effort to establish a workable and efficient desegregation plan which will not disrupt the school system of Harford County and which will be accepted by the reasonable and right-thinking people of Harford County.

The Appellants have suggested that it was quite improper for a County Board and a County Superintendent to give any consideration whatever to the possibility of strenuous or violent opposition to a desegregation plan. The Supreme Court has not stated this as the law, and it is not the law. On the contrary, the Supreme Court itself provides for a gradual, rather than an immediate, change-over from a segregated to a desegregated school system. Obviously opposition of a local community to such a transfer in its entirety cannot be permitted to "*devitalize*" the constitutional principles involved. The Supreme Court, however, clearly points out that the *public interest* which, of necessity, must include the maintenance of *public order* and *public tranquility*, especially in the operation of the *public school system*, must be considered by the District Court as well as

by the local school officials. This does not mean that there may be unreasonable delay, but it does mean that during an interim period of change from a segregated to a desegregated system, the application and the timing of the desegregation process may, in the good judgment of the County Board, be deferred or accelerated on a reasonable basis depending on the chances of success of the program. As the County Board has stated several times, its duty is to provide the best public school system it can for *all* the students of Harford County regardless of their color, and at the same times its duty is to implement within a reasonable time and with deliberate speed the decision of the Supreme Court in regard to the constitutional rights of the parties involved. This has been done on a reasonable basis by the County Board upon pedagogical considerations for the benefit of the entire school system and after evaluating administrative problems, personnel problems, transportation problems, and social adjustment problems involved in the situation. It is comforting to note that the plan is working well in the practical operation of the public schools. Local opposition has been moderated. The parents of some of the Appellants have testified that the racial atmosphere in Harford County is good and that there is community acceptance both in the public schools and in the Parent-Teacher Association of the desegregated system. These benefits are not lightly to be discarded, particularly in view of Chief Justice Warren's admonition that "the primary responsibility for elucidating, assessing and solving these problems" is upon the local school authorities, and also in view of the general policy of the Federal Courts not to interfere with the administration by the State of its public functions unless such interference is absolutely necessary for the protection of a constitutional right guaranteed by the Federal Constitution.

A review of this record discloses that not only were Judge Thomsen's findings not clearly erroneous but that they were clearly in accordance with the great weight of the evidence.

CONCLUSION

For the reasons and upon the facts stated above, this Court should affirm the Judgment of July 3, 1957 and require the Appellants to pay the Costs.

Respectfully submitted,

EDWARD C. WILSON, JR.,
WILSON K. BARNES,
Attorneys for Appellees.

APPENDIX TO APPELLEES' BRIEF NO. 7552

(R. 61-73): Wednesday, November 14, 1956

(Mr. Greenberg) We would like to call Mr. Willis, Your Honor.

CHARLES W. WILLIS,

was called as a witness for and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Greenberg:

Q. Mr. Willis, what is your position? A. I am Superintendent of Schools, Harford County.

Q. How long have you held that position? A. Since July 15, 1945.

Q. As Superintendent of Schools of Harford County are you aware of a series of reports made by a group known as the Citizens Consultant Committee — I believe that is the name — are you aware of that? A. Yes.

Q. Do you have such of those reports here with you? A. I have several of the sub-committee reports that were in fact given to the Board of Education and were distributed to the members of the Committee.

Q. May I see them, please? A. Yes.

(Mr. Barnes) As to the sub-committee reports of the Citizens Consultant Committee, I will object to the admissibility of them in evidence because the final resolution of the Committee was the resolution of February 27, 1956, and it was that resolution which was presented to the members of the Board of Education, the one which was adopted by the members of the Board, so that any preliminary reports of sub-committees would obviously, I think, be merged into

the final action of the Committee, and it is only the final action of the Committee which would be admissible in evidence in this case.

(The Court) Let us get some more information about it. By whom was the Committee appointed?

(The Witness) The Committee was appointed by the Board of Education.

(The Court) Then what?

(The Witness) Well, I don't have the minutes of the meeting here, Your Honor, but as I recall it there was quite a bit of discussion prior to the appointment of the Committee, and the Board did take action on the appointment of the Committee to advise them on the problems of integrating the schools of Harford County.

I recall that the meeting -- do you want the names of it? Shall I go ahead?

(The Court) Yes. Did you meet with the Committee?

(The Witness) I was not supposed to. The Board felt that it would be better if I did not meet with the Committee; but they felt some member of our staff should meet with them and give them the information that they needed, but later I did, but the first one was attended by this member of our staff, our Assistant Superintendent, and he was also there for the second meeting, and I did attend that, and I had nothing to say, but I had no influence on them, and on several occasions I believe I was asked for information which I gave; I don't know what about.

(The Court) The Committee did this work through the Committees.

(The Witness) Yes.

(The Court) Was that fact reported to the School Board? Was that a matter of public knowledge?

(The Witness) Well, yes, I think it was public knowledge, and they had several committees because our office did some work for the committee,

(The Court) Supplied them with some information?

(The Witness) Yes, as they requested it, or asked a member of our staff, and we gave them a member of our staff who could work with them, although I didn't meet with the committee, I met with the chairman several times and gave the information on the facilities.

(The Court) Did the School Board know that you were working with the sub-committees?

(The Witness) I think they did, yes.

(The Court) Or your staff?

(The Witness) Yes, it was a matter of knowledge and were discussed at the meetings.

(The Court) Well, as I understand it these papers Mr. Greenberg has shown you are reports made by the sub-committee to the general committee. Were they made at that meeting which you attended?

(The Witness) Yes.

(The Court) The second meeting?

(The Witness) They were made at that meeting, yes, but as I recall there was no formal adoption of any of these reports. They were simply made, and that meeting had the sub-committee reports and the reports were made, and then the chairman made a report of what had been done elsewhere in the State, and the information was obtained for that just prior to that meeting, and as a result of these four things, I would say, they passed the Resolution which was written out and sent to the Board.

(The Court) May I see that? I haven't seen that yet.

(Mr. Greenberg) Yes (handing document to the Court).

(The Court) Are they separate or bound together?

(Mr. Greenberg) Some are bound and there are some that are separate.

(The Court) Well, you say that to the best of your recollection they were not adopted by the Committee as a whole?

(The Witness) I don't think so.

(The Court) At this time, Mr. Greenberg, I think that the papers might be marked for identification as Plaintiffs' Exhibit 1-A, B, C, and D, although perhaps they might be received in evidence at this time in order to show the fields of study covered by the sub-committees of the General Committee.

It may be that further evidence will make them admissible for other purposes, but I think that they should be so limited at this time.

By Mr. Greenberg:

Q. Have you read these reports? A. Yes, sir, I have.

Q. Are you familiar with the wording of the conclusion of the Sub-Committee on Facilities? Has that been reported to you in your capacity as Superintendent? A. I am aware of the report. It was never reported to me officially by any group.

Q. How did you get this? A. Our office served as secretary of this committee and I served for the whole committee, and all this, we did the paper work and sent out the letters.

Q. You administered the work of the committees? A. No, we didn't administer the work of the committees; we administered the secretarial work of the committee, would be the better way to put it.

Q. Did you personally have anything to do with this or some secretary in your office? A. I personally probably told which secretary to do it at the time. I don't know exactly. That would be the normal procedure.

I think my personal secretary did most of the typing. Just because we did the typing didn't make it our report.

(The Court) Secretarial work. Is that just stenographic service or what kind of work? Is that generally secretarial work?

(The Witness) I mean stenographic service. It was sent to us and we typed that up and mimeographed it and sent it back in quantities.

Q. (Mr. Greenberg) On September 22, 1955 did you write a letter to Mr. Harold G. Baker, who was a member of the Citizen Consultant Committee of the Sub-Committee on Facilities? A. I did, yes.

Q. In this letter did you transmit the appointment to Mr. Baker, this assignment? A. Yes.

Q. Did you transmit the assignment as appears there in your capacity as Superintendent of this, of Schools? A. Well, this was signed I guess because my custom is usually to sign my letters and I usually signed them in that way.

Mr. Volkart, who was Chairman of this Committee, sent me the requests to send out to the various Committee members, but since we are speaking of the matter you will notice that this letter here is from Mr. Volkart which came to me, and then this is the covering letter, because when we started they had these names on it, as for instance this report here when it was sent to these people had these names here on it, and when it was sent to any committee they had their names on that and then Mr. Volkart sent this out, this one here.

Q. You signed that letter? A. The first one here is mine, but this one here was the covering letter.

Q. But you signed that letter "Charles W. Willis, Superintendent of Schools"? A. But this here letter was the one telling them they were appointed.

Q. Then on August 15, 1955 did you send a letter to Mr. Harold G. Baker signed "Charles W. Willis, Superintendent of Schools"? A. Yes, that was normal, but do you mind if we go back so then I can tell you about this matter, the Board, when they considered accepting any names selected

the names from people of the various parts of the County, various communities whom they would like to have as members of this Consultant Committee, and each took a certain number of these names, each member of the Board — we have seven — and each took six or seven names of people and asked each person to become a member of the Consultant Committee, and they made personal contacts.

That was in the month of July, and the meeting of the Board at which that occurred was held June 30th; so the next meeting was the first Wednesday in August, Wednesday, but I don't recall the date, but between that time, between June 30th and the first Wednesday in August, the members of the Board asked these individuals if they would serve on the Sub-Committee, and before that August meeting they had the names of people who had accepted membership on this Committee.

Then I wrote all these people telling them they had been appointed and expressing appreciation for their willingness to serve, and told them when the first meeting would be, and I believe that is this letter that you just referred to.

Q. Was it one of your duties to execute policy decisions of the Board as the Superintendent of Schools? A. That is correct, yes.

Q. Well, how does it differ from the action you regularly took as Superintendent of Schools? A. I don't see it was any different in this case. It was transmitting a matter that had been taken up by the Board of Education and the Citizens Committee, and I agreed to serve with the Committee and wrote the letter.

Q. As Superintendent of Schools was it your duty to keep advised and abreast of the decisions and policies of the School Board so that you might properly execute them? A. Yes.

Q. Aren't these policies — policy decisions communicated to you in the ordinary course of your business? A. That is correct.

Q. And have these policy decisions been communicated to you in the ordinary course of your business as Superintendent of Schools? A. What in particular?

Q. I am referring to Exhibits 1-A, 1-B, and 1-C.

(The Court) They are not policies of the School Board.

(The Witness) They never went to the Board of Education.

(The Court) You say they were never transmitted to the Board of Education?

(The Witness) No, sir.

(The Court) I take it it was a part of his duties as Superintendent to be familiar with what was going on in the School Office in the County.

(Mr. Greenberg) Yes, sir, I understand, but as Superintendent of Schools these were all transmitted to him because it was his duty to receive these things, and here is information obtained by an official of the School System.

(The Court) I don't have any doubt, and I don't think there is any dispute about it, about the obtaining of these copies whether from the members of the Sub-Committee or from the Committee or the members themselves, it is the same thing, so I might be familiar with what was going on in my official capacity, taking a similar instance, but that does not make that the action of the School Board or the action of the Committee other than that they were the actions of the Sub-Committee.

(Mr. Barnes) That is correct.

(Mr. Greenberg) I want to offer this to show that this was transmitted to him in the ordinary course of business as Superintendent of Schools.

(Mr. Barnes) Well, I don't think it is and I object to that.

(The Court) I think Mr. Barnes is aware that certainly the School Board had knowledge of the fact that these steps

had been made by the Sub-Committee, and I think they are admissible in evidence to show what the Sub-Committee had considered, and the School Board knew at the time that these reports had not been adopted, or so far as I know repudiated by the Board, and for that limited purpose I think they may be offered.

The question is what relevancy or materiality they may have.

Now, their competency in effect is that they are reports of the Sub-Committee, not adopted by the General Committee, and they came to the attention of the Superintendent of Schools in the course of duty, which presumably were matters of common knowledge in Harford County.

Now, I think that shows what their competency is. Now, whether they are relevant to any issue in this case or what their materiality is, is another matter, and I suppose that can only be determined when all of the evidence is in, so I think they might be received in evidence for that limited purpose at this time.

(The Witness) May I say something?

(The Court) Yes.

(The Witness) I don't want to say in the record that the Board didn't know about any of them. I am not sure whether the Board got this complete one on facilities or whether they just got part of it, or the data, it was probably studied and tied in closely with some plans we had for future construction. So I do think they had part of this, but whether they had the whole thing, I am not certain.

(The Court) Do you know whether that report was available to the members of the School Board?

(The Witness) Yes, it was available. We usually route these at the meeting, and whether I did that with the whole report or part, I could not say, but the other two weren't.

(The Court) 1-A was.

(The Witness) Yes.

(The Court) This on facilities, which is 1-A, that was available to the School Board?

(The Witness) Yes.

(The Court) For a matter of discussion?

(The Witness) Yes.

(The Court) And the other reports were available to the School Board if they wanted to read them, but you don't know whether they did or not?

(The Witness) I don't know definitely.

(The Court) Well, they weren't kept secret?

(The Witness) They weren't kept secret, no.

(Mr. Barnes) The President of the School Board is here and we expect to offer him.

(The Court) I will draw any inferences after I have heard all the evidence.

Q. (Mr. Greenberg) The Sub-Committee reports made a detailed study on facilities in Harford County Schools? A. That is correct.

Q. Are you aware of the conclusion of the Sub-Committee on Facilities? A. I have read the whole report, yes.

Q. Was that conclusion reported to you? A. I don't recall about the conclusion.

Q. This conclusion on page 4 of Exhibit 1-A? A. That is correct.

* * * * * *

(R. 83-91):

By Mr. Barnes:

Q. Now, Mr. Willis, are you familiar with the opinion of the Attorney General of Maryland of June 20, 1955 to Dr. Pullen with respect to the effect of the decision of the Supreme Court of the United States in Brown v. Board of Education of Topeka, 349 U. S. 294 on the laws of Maryland

requiring and permitting segregation of the races in the public school system of Maryland? I think that appears as Defendants' Exhibit 8? A. Yes, I was, I am.

Q. Are you familiar with the resolution of the State Board of Education and others dated June 22, 1955 which has been introduced as Defendants' Exhibit 9? A. I am, yes.

Q. And is the Board of Education of Harford County familiar with both of these Defendants Exhibits 8 and 9? A. Yes.

Q. What do you understand was the effect of the opinion of the Attorney General and the Resolution of the State Board of Education upon the laws of Maryland requiring or permitting segregation of races in the Public School System of Maryland? A. I understand that the laws became null and void.

Q. Did the Board have the same understanding? A. I think they did, yes.

Q. Do you or the Board have any intention not to comply with the resolution of the State Board of Education of June 22, 1955? A. No, sir, we do not.

Q. Now, what actions did the Board of Education of Harford County take pursuant to that resolution of the State Board of Education of June 22, 1955? What actions did you take pursuant to that resolution? Just in chronological order. Take June 30th, 1955. A. June 30th, 1955, the Board held the regular July meeting at my request.

Q. The July meeting was what? A. The regular July meeting it was, I had to leave to go to summer school on this work that I just mentioned, and I requested the Board to do this, you understand.

(The Court) I have had some experience with school boards.

(The Witness) And they did this, and that is the reason the July meeting was held in June, which is unusual, and that is the reason.

So that my main purpose was to select, select the Citizens Committee to advise the Board on the problem of desegregation of the schools of Harford County.

I might point out this was just eight days after the letter from Dr. Pullen that you just mentioned, which was June 22d.

However, prior to this meeting I had asked the principals of most of our schools, at least all of the larger ones to give me a list of people in their communities whom they thought would make good members of this Committee. I had probably ten or fifteen such lists, and in addition to that I had a list of 247 people I usually thought of as friends of the schools in the different communities of our County, and I might say there was some duplication between the individual lists and my lists, and we had studied this to make a good selection, I think for a least a couple of hours, and at the end of that time we decided on the size of the Committee, and each member of the Board had taken a list of the people in their areas whom they thought they could contact personally and ask to became members of this Committee, and they took the list for this purpose and they came back, that came back and they were given to me, which was the regular next meeting, after they had accepted appointment, which was done.

Then the next meeting was held August 6th, and after the August 6th meeting I sent a letter to all the members of these Committees for their acceptance.

Q. (Mr. Barnes) How many members were there on the Committee? A. Thirty-six.

Q. Who was appointed chairman for the Committee? A. Mr. Ernest Volkart.

Q. Were there any Negroes on the Committee? A. Yes, five.

Q. Out of the thirty-six? A. Yes. They were presidents of Parent-Teachers Association, head of a national association for the Protection of Colored People, people from

various sections of the County, a Doctor from Havre de Grace, and I was the only one that had any official capacity.

Q. What happened next? When did this Committee report? A. I might mention this that after the August 6th meeting letters were sent out telling them of their appointment, indicating the time of the first meeting would be August 15th.

They held that first meeting which I didn't attend, and Mr. Harry, President of the Board was in the building, just inside the building, but weren't in the meeting where they could see me.

Q. Was that done deliberately? You didn't attend deliberately? A. I didn't attend deliberately, nor did, Mr. Harry didn't attend. We also agreed that I went up to the meeting, and then as a result of that meeting four Sub-Committees were appointed by the chairman.

These Sub-Committees were on Facilities, Transportation, Social Relationships, and Public Opinion.

The Public Opinion Committee didn't meet, so therefore there is no report from that group.

Now, these Committees were directed to gather their evidence and inform the chairman when they were ready to make a report, and each Committee had a member of my staff, as for example Facilities, to gather information and I personally served with them because I was the only person on my staff who was familiar with the enrollment problems, and that was the procedure.

Then these sub-committees apparently reported to the President some time — or the chairman, Mr. Volkart, some time in February that they were ready to report; so the meeting of the full Committee was held on February 22d, and where I mentioned the member of my staff, the member we had the first time was ill and in the hospital, so I went, I went to this meeting.

I didn't offer any opinion, although I was asked for information in one or two respects. I don't recall what they were.

At that meeting the Sub-Committee chairman gave the reports, and the chairman gave their report of what was being done elsewhere in the State of Maryland, and as a result of this plus some discussion of what had occurred the resolution was made, and I believe, unanimously passed. That was the end of the meeting.

Mr. Volkart, the chairman, sent that resolution to the Board of Education as the final report of the Committee, and that was a six-page resolution, I think, the original with Mr. Volkart's signature on it.

Q. That is the one that appears as Defendants' Exhibit 10? A. Yes.

Q. Then what did the Board do with respect to the resolution of February 27th? What did it do? A. On March 7th at the regular meeting of the Board, the Board approved the adopted resolution that was passed by the Citizens Committee.

Q. What was the next step that the Board took? A. On June 6th the Board approved the plan for requesting transfers and so advertised in all the papers in the County. I think you made a statement it was in the Aegis.

Q. And other papers? A. Yes. We have four papers and we had advertisements in all four of them.

Q. You advertised in all papers? A. Yes.

Q. That has been put in evidence as Defendants' Exhibit No. 2, Your Honor.

Now, pursuant to that advertising, you had how many applications? Fifty-nine applications were— A. Yes.

Q. And there was one— A. One was a mistake by my secretary.

(Mr. Barnes) Not sixty.

Q. (Mr. Barnes) You granted fifteen? A. Yes.

Q. And rejected forty-five? A. Yes.

Q. On August the 1st, what did the Board do? What happened next? A. The Board adopted the policy, the so-called Desegregation Policy.

Q. Which appears as Defendants' Exhibit No. 3? A. Yes.

Q. Thereafter on August the 7th, 1956 did you write letters to the forty-five persons or parents of the forty-five applicants who had been denied, rejecting or denying those applications? A. That is correct, and with that letter we enclosed a copy of this policy.

Q. That is the Desegregation Policy of August 1st, 1956? A. Yes.

Q. And those letters include the four letters to Mr. and Mrs. Moore, Mr. and Mrs. Spriggs, Mrs. Slade, and Mr. Garland? A. Yes.

Q. Which were offered as Defendants' Exhibits 4, 5, 6, and 7? A. Yes.

Q. Now, Mr. Willis, did you understand that in promulgating the transfer policy of June 6, 1956 and the Desegregation policy of August 1st, 1956 you were carrying out the resolution of the Board adopted on March 7th, 1956? A. Yes, sir.

Q. And did the Board have the same understanding? A. Yes.

Q. Why do you say that? A. The Board in the State resolution, when that first came in felt that it was so broad a resolution it did not give them any authority to exercise what they thought was their best determination in the case, and they wanted to do what was the best thing, and they wanted to work it out under the regulations that would work in the light of what had been going on in Delaware, and the Board has been very cognizant of this problem for about two years, and when you look over the minutes, and I went through them once with one of the attorneys for

the plaintiff and pointed out all references to this problem of desegregation, the minutes of our meetings, and in our discussions trying to figure out a way to try to be uniform as to the best way to handle this problem.

* * * * * *

(R. 93-95):

Q. (Mr. Barnes) Do you believe that you and the Board have made a reasonable start in good faith to carry forward the integration of the public schools in Harford County? A. Yes.

Q. As far as you know, have the plaintiffs taken an appeal from your decision of August 7th, 1956 to the State Board of Education? A. I don't know of any.

Q. You don't know of any such appeal? A. No.

Q. If an appeal had been taken, you would know about it? A. Yes, sir, I think so.

(The Court) Can it be stipulated that there has been no appeal to the State Board of Education?

(Mr. Dearing) No appeal has been taken to the Board, no, to the State Board, no.

Q. (Mr. Barnes) Has the desegregation plan been accepted generally by the citizens of Harford County? A. Yes, sir, and I might state for the record that some of the people who most rabidly were against it have complimented us for the beginnings that we have made.

Q. Do you intend to continue the integration of additional grades in the public schools of Harford County based upon the experience obtained by this first year of operation under the plan? A. Yes. It is so stated in the policy.

Q. At the present time do you see any reason why there should not be further integration for the school year 1957-1958?

(The Court) He says that it is so stated in the policy, and I want to know to what he is referring?

(Mr. Barnes) That is the Desegregation Policy—

(The Witness) Of August 1st.

(The Court) Has the Board adopted any more specific plans of desegregation than as stated in the August 1st policy?

(The Witness) No, Your Honor, but we feel that for the next couple of months that in view of the plan that has been worked out and the steps taken that we have been successful to date.

* * * * * *

(R. 96-97):

(Mr. Barnes) Yes.

Q. (Mr. Barnes) Do you consider that you and the Board of Education of Harford County have made a reasonable start toward the complete integration of the schools of Harford County in a reasonable time and with deliberate speed and that this will be accomplished in a gradual and orderly manner? A. Yes.

(The Court) Well, I haven't heard Mr. Willis' good faith questioned.

Q. (Mr. Barnes) Are you relying on any state law, statute, order regulation, custom or usage which purports to require or permit continued segregation of the races in the public schools of Harford County? A. No, sir.

* * * * * *

(R. 100-105):

(The Court) What is the school set-up in Harford County?

(The Witness) It is a six-three-three system.

(The Court) This is applying for what grade?

(The Witness) He would be in the Junior High School.

(The Court) There is a Junior?

(The Witness) There is a Junior and Senior High School there.

(The Court) His application is put under Junior-Senior High School for the lowest grade in that school?

(The Witness) That is correct.

(Mr. Greenberg) Rosalind Slade and Patricia Garland both live in Aberdeen, and they must travel six miles to the Hall Cross Roads School, and they desire to transfer to the Aberdeen High School in Aberdeen.

(The Court) What grade?

(Mr. Greenberg) That is the ninth and eleventh grades. They want to transfer to the Havre de Grace High School, rather.

(The Court) That would be the third year Junior High and the second year High School?

(The Witness) Yes.

Your Honor, may I make one correction?

(The Court) Yes.

(The Witness) The first one, the Moore children do not live fifteen miles from the school, but they live right in Bel Air, so it would only be three miles from the school to Hickory, not fifteen.

(Mr. Dearing) That is true.

(The Court) All right. Three miles, Let's get that on the map. Just mark the location of the Central Consolidated School at Hickory.

(The Witness) Yes.

(The Court) Well, do they walk from here, or is there transportation?

(The Witness) There is transportation, yes (referring to map).

(The Court) Do you provide transportation from children living in Bel Air to the Bel Air High School?

(The Witness) No, sir, we don't.

(The Court) Do you provide transportation from children living in Bel Air to the Central Consolidated School in Hickory?

(The Witness) Yes.

(The Court) Do you provide transportation from children living in Edgewood to the Edgewood High School?

(The Witness) Yes, some.

(The Court) And some walk?

(The Witness) Some walk, yes.

(The Court) And do you provide transportation from Edgewood to the Hickory Consolidated School?

(The Witness) Yes.

(The Court) And do you provide transportation from people living in the Chesapeake — is it?

(The Witness) Gardens.

(The Court) Chesapeake Gardens on the Aberdeen Proving Grounds to the Aberdeen High School?

(The Witness) Yes, we provide transportation.

(The Court) And you also provide transportation to the Havre de Grace Consolidated School?

(The Witness) Yes.

(Mr. Barnes) I just want to ask a question here.

By Mr. Barnes:

Q. Is this transportation provided free of charge? A. Yes, it is free.

Q. And is the transportation the same regardless of whether the person is white or colored? A. Yes, it's all the same.

(The Court) There is no question of inequality of facilities, as I understand it.

Do I understand you to say in the high schools you consider the Bel Air High Schools to be overcrowded or to have lack of facilities?

(The Witness) That's right.

(The Court) Is there any restriction on white children attending the Bel Air High School?

(The Witness) No, sir, but we have a situation that I might say that in the past the children from the Edgewood area have gone to the Bel Air High School, and it has gotten so overcrowded that we several years ago built a new high school in Edgewood, and allowed those in the Senior High School to finish in Bel Air, and we are cutting those each year, and this year we have a senior class that will be the last senior class to go there, and the last one from the Edgewood area to go to Bel Air, and next year the Edgewood School will become a full high school, and started with the Junior High School to let the children go there.

(The Court) Are children in Harford County required to attend the nearest school or are they permitted to attend a school of their choice, taking white children?

(The Witness) In general it is this, they are required to attend a school in their area, and the bus routes make some difference. We have a great transportation problem.

(The Court) Because of distances you normally wish them to attend a school in their area?

(The Witness) Yes, because bus transportation is available and you don't make bus transportation available on an erratic course.

(The Court) There are some places where there is a complete school where they come practically to the same point.

Are there any restrictions on a white child who wishes to attend the Bel Air High School, any restrictions placed upon such a child?

(The Witness) Yes, we wouldn't let him go from Havre de Grace to the Bel Air High School. I don't know that we have had such a request.

(The Court) But it is sufficiently crowded that you do make some restrictions?

(The Witness) Yes.

(The Court) On white children.

(The Witness) Yes.

(The Court) Attending?

(The Witness) Yes.

(The Court) Now, what about the Edgewood High School? Is that the new school being built?

(The Witness) No, it has been in use. I think this is the third year, Your Honor.

(The Court) Are the facilities there overcrowded?

(The Witness) At the present time we are planning an addition to them, yes.

(The Court) Well, what restrictions, if any, are there on children attending the Edgewood High School?

(The Witness) I don't know of any restrictions.

(The Court) Is the Aberdeen High School overcrowded?

(The Witness) No, sir, it is not.

(The Court) Is the Bel Air Elementary School overcrowded?

(The Witness) It is probably the most overcrowded school we have. We are planning to build a twenty-four room Elementary School in another location in Bel Air next year.

* * * * * *

(R. 111-112):

(The Court) Is the Edgewood High School any more overcrowded than the Hickory Consolidated School?

(The Witness) I don't think so. I think they are probably about the same.

(The Court) The other three were a matter of policy?

(The Witness) Yes.

By Mr. Greenberg:

Q. This standard that you have mentioned, that is a national standard? A. That is correct.

Q. What is the standard of the State of Maryland? A. The same.

Q. Identically the same? A. Yes.

(The Court) It is an ideal which is by no means achieved. I think that most of us know that we have done our best to achieve that, but I think the general average in Maryland runs considerably above that, doesn't it?

(The Witness) Yes, especially places like Baltimore County and Prince George's County, and ours to some extent.

* * * * * *

(R. 112-120):

DAVID G. HARRY,

was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) David G. Harry.

DIRECT EXAMINATION

By Mr. Barnes:

Q. What is your occupation, Mr. Harry? A. Farmer.

Q. What position do you have with the Board of Education of Harford County? A. I am President of the Board.

Q. Are you familiar with the opinion of the Attorney General of Maryland, June 20, 1955 to Dr. Thomas G. Pullen with regard to the effect of the decision of the Supreme Court of the United States in Brown v. Board of Education on the laws of Maryland requiring or permitting segregation of the races in the public school system of Maryland? A. I am.

Q. And are you familiar with the resolution of the State Board of Education of June 22, 1955, which is Defendants' Exhibit No. 9? A. I am.

Q. And you are President of the Board of Education? A. Yes.

Q. What do you understand was the effect of the opinion of the Attorney General and the resolution of the State Board of Education upon the laws of Maryland requiring or permitting the segregation of races in the public school system of Maryland? A. That made the laws of Maryland null and void.

Q. Did the Board have the same understanding? All members of the Board? A. Yes.

Q. Does the Board have any intention not to comply with the resolution of the State Board of Education of June 22, 1955? A. They do not.

Q. Do you understand that in promulgating the "Transfer Policy" of June 6, 1956 and the "Desegregation Policy" of August 1st, 1956, you were carrying out the resolution of the Board adopted March 7th, 1956? A. I did.

Q. You heard the testimony of Mr. Willis in this case, have you not? A. Yes.

Q. Is his testimony as you heard it substantially correct? A. It is.

Q. Do you believe that the Board of Education of Harford County has made a reasonable start in good faith to carry forward the integration policy in the public schools in Harford County? A. I do.

Q. Do you consider the plan which the Board of Education of Harford County has adopted to be successful thus far? A. I do, yes, very successful thus far.

Q. Does your Board intend to continue the integration of additional grades in the public schools of Harford County based upon the experience obtained by this first year of operation under the plan? A. That has been discussed informally among the members, yes, and it will be continued and enlarged upon.

Q. Do you consider that the Board of Education of Harford County has made a reasonable start toward completing the integration of the schools of Harford County within a reasonable time and with deliberate speed? A. I do, yes.

Q. And is it your opinion that this will be accomplished in a gradual and orderly manner? A. Yes, it is.

CROSS EXAMINATION

By Mr. Watts:

Q. Mr. Harry, do you recall how many groups appeared, groups with respect to integration of schools in Harford County? A. You said what?

Q. Do you know how many groups? A. Before the Board?

Q. Yes. A. I would say perhaps three. That is to the best of my recollection, were opposed to integration at all, perhaps two in favor.

Q. Isn't it also true that even as early as 1954 certain groups did appear before such Board asking that steps be taken to— A. That is correct.

Q. And isn't it true that the School Board also refused to bring in the P-T-A and interested people in the community in 1954? A. That was requested, yes.

Q. You said before that this decision of August 1st was an attempt to carry out the resolution as adopted by the Board on March 7, and in that March 7th resolution it stated

"any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child." Are you telling His Honor and this Court that August 1st on which the first three grades were to be admitted was in accordance with the resolution of March 7th?

(Mr. Barnes) Well, Your Honor, I object to that question.

(The Court) Well, he answered your question without hesitation which was pretty broad.

(Mr. Barnes) Very well, sir.

Q. (Mr. Watts) Mr. Harry, are you familiar with the decision of this Court in the case of St. Mary's County? A. I haven't read it.

(The Court) Well, you can ask him whether h' is familiar with it.

(Mr. Watts) I assume he was familiar with it.

Q. (Mr. Watts) Was the Board of Education of Harford County in any way influenced by the decision of Judge Thomsen in that case? A. They were not.

Q. That came between March 7th and August 1st? A. I was handed just last week a reference to this and that is the only way I know I am familiar with it but that in no way influenced any decision.

Q. It was not discussed? A. No.

Q. Was your counsel present at your August 1st meeting? A. He was not.

Q. Did he have any discussion with you or any member of the School Board from say July 24th up until— A. No.

Q. A month before the August 1st decision? A. No.

Q. Mr. Harry, Mr. Willis said your Board considered the difficulty that was encountered in Delaware and somewhere else. Did your Board also take into consideration in formulating the August 1st policy the experience of places closer, and I have reference to, say, Montgomery County or Balti-

more City or Baltimore County in which the plan was working successfully without difficulty? A. I think in our discussions that perhaps those cases were mentioned at different times and has been a subject for the Board to consider for the past year and a half or two years, and any instances were probably brought up, but when we actually discussed and formulated the policy, they were not, they were not a part of the discussion to my knowledge.

Q. Mr. Willis said that it was felt by the Board that the first three grades, which was a sensitive area in which you might encounter difficulty, that is what I had reference to, the fact that you limited it to the first three grades, did you consider that the reason might be you might have some trouble and that was the basis for it? A. You asked me how many groups came before the Board and I had many groups and many individuals came to me personally against integration. I had no one come to me for integration personally.

Q. Were you influenced by the fact that persons were against it in any way? A. I would say no more so than I was influenced by any other group that I heard of as a member of the Board.

Q. Most of these people were against the decision, weren't they? A. A good many of them were.

Q. Mr. Willis said that in a case where the facilities were available and he said he felt that it was sensitive, and so he refused, but I just wondered, wanted to ask you whether any steps were taken by your Board in these rural areas to allay this difficulty in sensitive people? A. I don't think we had time because that was in September 1956 and this is only November 1956 and I don't think we have had time, to make sure that we are making progress to a degree where we could put a child in.

Q. Well, you were asked to do this and you refused to do it? A. We were asked to take one child in September 1955.

Q. You were asked to bring the P-T-A together? A. Well, you also asked us to take one child, in September,

and we refused because the Court had not come out with a decision.

Q. Didn't we also ask you rather than wait for a decision because you say you didn't have time, didn't we ask you to see that certain steps were taken to bring the parties together? A. Yes.

* * * * * *

(R. 122-125):

ERNEST VOLKART,

was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

(The Clerk) Your name is Ernest Volkart?

(The Witness) Yes.

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Volkart, what is your occupation? A. I am a lawyer.

(The Court) And he is a member of the judicial family of this Court.

(Mr. Barnes) Thank you.

Q. (Mr. Barnes) You are United States Commissioner, aren't you? A. Yes.

Q. Were you appointed Chairman of the Citizens Consultant Committee by the Board of Education of Harford County on August 6th, 1956? A. Yes.

Q. How many members were there on that Committee? A. The Citizens Committee?

Q. Yes. A. Thirty-six including myself.

Q. Were there any colored members? A. Five.

Q. And after the Citizens Committee was appointed, what did it do? A. At the first meeting, sub-committees

were appointed, one on Facilities, one on Recreation, one on Transportation, and one to make a survey of public opinion.

Some members of the Committee were in touch with me between the time of appointment in the early part of September 1955 until the final meeting in February of 1956.

Q. Were there sub-chairmen of these committees appointed? A. Yes, sir.

Q. Now, I think you mentioned the meeting of February 27th, 1956. Tell us what happened at that meeting, and what the resolution of the Board was. A. That was the meeting of the sub-committee. The reports were read. The Committee on Public Opinion did not make any report. After they were read and were discussed, the resolution that has been introduced was prepared by me and submitted to the membership of the Citizens Committee and unanimously adopted.

Q. What is your understanding of the practical effect of that resolution of February 27th, 1956, Mr. Volkart? A. The practical effect, as the Committee and I understood it, was that the change which had taken place under the Supreme Court ruling would have to be in a measure gradual and that the Citizens Committee could not prescribe any specific pattern, and that the resolution speaks for itself in that the School Board must make rules and regulations to integrate the schools gradually and consistent with the best interests of our citizens of Harford County.

Q. And were the recommendations of the various sub-committees adopted by the full committtee? A. They were not.

Q. Are you familiar with the Transfer Policy of the Board of June 6th, 1956 and the Desegregation Policy of the Board of August 1st, 1956? A. I have read them in our County papers.

Q. Do you consider that these actions of the Board are consistent with and in furtherance of the resolution of the Citizens Committee of February 27th, 1956? A. I think so.

* * * * * *

(R. 140-152): Thursday, April 18, 1957

CHARLES W. WILLIS,

a witness previously called for and on behalf of the defendants resumed the witness-stand and testified further as follows:

DIRECT EXAMINATION

(The Court) How many white high schools are there?

(The Witness) You counted the two Consolidated Schools.

We have one white high school at Bel Air. That's six years. All of these are six years.

We have one at what we call North Harford. That is a consolidated area in the northern part of the county. We have one at Aberdeen which has the sixth grade in the elementary school, that is. That is, it has a sixth grade in addition to the regular high school grades.

(The Court) Well, I wanted to get that. Is the sixth grade of the Aberdeen School considered a part of that school or is it considered a part of the elementary school that you just mentioned, or is it just a temporary arrangement?

(The Witness) It is just a temporary arrangement, Your Honor. We over-built that school, and it was easier to over-build that than any of our elementary schools, to take care of those immediately, but we will need it for our high schools in several years, and by that time we hope to have another elementary school.

(The Court) But that sixth grade is administered as a part of the high school?

(The Witness) Yes, at the present time.

(The Court) So that children transferred to that—

(The Witness) If they transferred to that grade, it would be in the elementary. We consider it an elementary grade, yes.

(The Court) It is a difficult problem on what is a transfer and what is not.

(The Witness) Yes.

(The Court) That is one of the things I had some difficulty with in understanding your plan.

(The Witness) Yes.

(The Court) I understand that if a child in the third grade would normally go to the fourth grade in the same school that he is in, but if he wants to go to another school, that is a transfer.

(The Witness) Yes.

(The Court) Now, do you consider going from — let's take Bel Air where you don't have this sixth grade problem — does a white child who graduates from the elementary school in Bel Air and goes to the junior high school in Bel Air, is that considered as a transfer or is that considered as entering a new curriculum or any intermediate level?

(The Witness) We never thought of it in terms of transfer, no, sir.

(The Court) And what about going from the junior high into the senior high?

(The Witness) The same thing. In our case it's very simple because they don't even go to a different school. All their junior high grades are in the senior high school.

(The Court) Well, if a white child, having completed junior high school at Bel Air, wished for some reason, if his family moved, or for some other reason, to go to the North Harford School, for senior high or vice versa—

(The Witness) Yes.

(The Court) Would that be considered a transfer?

(The Witness) No, sir. Well, we don't allow that because we have to keep our school facilities in line, and he wouldn't be allowed to go up there unless he lived there.

(The Court) You mean children are required to attend schools in the area in which they live?

(The Witness) Which has been established for them.

(The Court) Which has been established?

(The Witness) Yes.

(The Court) I think there was some testimony that you practically never have any request from white children to go to any other schools or to be transferred?

(The Witness) Maybe one or two a year; nothing to amount to anything because the policy has been well established over a period of years.

(The Court) Are those transfers that you have for white children based upon their families having moved from one area to another or based upon some other reason?

(The Witness) Well, usually it would be a problem like this, if I may state it specifically—

(The Court) Yes, because I want to get the picture.

(The Witness) I think I can give you one case which I think will explain it. We have two little girls that went to Bel Air all their lives up to about the ninth or tenth grade, and their families then moved to Aberdeen.

Now, they had all their associations in Bel Air and they wanted to drive back and forth and go to Bel Air and continue there; but that was outside of our policy, and we don't think it is proper to allow that to happen in that case, so they were told to go back to Aberdeen, which they did, and then a month or so I happened to see them and speak to them, and they were satisfied with things where they were.

(The Court) You have bus routes?

(The Witness) Yes.

(The Court) And the children are picked up on those bus routes and taken to a particular school?

(The Witness) Yes.

(The Court) And you provide no transportation to any school other than the one—

(The Witness) That is correct.

(The Court) — covered by that route.

(The Witness) Except in some cases where the buses will run together, we might have a little bit of overlapping.

(The Court) There is some occasional overlapping?

(The Witness) Yes.

(The Court) But practically you have never set up any policy for transferring white children?

(The Witness) That is correct.

(The Court) Because it doesn't really exist, and each one is treated on a separate basis?

(The Witness) Yes. If they move after the end of the first semester and they wish to continue in the school, we allow that.

(The Court) But the parents have to take care of the transportation?

(The Witness) They have to take care of the transportation.

(The Court) Now, tell me about the other high schools. Bel Air, Harford, and Aberdeen.

(The Witness) Havre de Grace High School. That is the sixth grade.

The other one would be the Edgewood High School, and this is a little bit of a different situation. We thought of growing into that school, and we do not have a senior year at the present time, and it has six grades in it. It has six elementary grades, seven, eight, nine, junior high school, and ten and eleven senior high schools. But next year it will be a full senior high school.

We will have to keep the sixth grade there next year, but we hope to do some building that will take care of that in another year.

(The Court) Now, that's the high schools.

How many elementary schools are there — and I want to divide them into four groups, and maybe we will have to subdivide them.

There are two elementary schools in which Negro children were admitted to the first three grades this past year.

(The Witness) Yes, sir.

(The Court) Now, what schools are those?

(The Witness) They are Edgewood Elementary School in Edgewood, and Halls Cross Roads Elementary School, which is in Aberdeen, Aberdeen, near the entrance to Aberdeen Proving Grounds.

(The Court) They are the ones, the first three grades in the fall of 1956?

(The Witness) That is correct.

(The Court) Now, there were two other schools which were not overcrowded but to which you did not admit any children. Which were those schools?

(The Witness) One was — Darlington was one, and I think the other one was Perryman near Aberdeen, a two-room school.

(The Court) You have no application for one of them, but you have one application for the other?

(The Witness) One application for Darlington, and none for Perryman.

Now, Judge, Your Honor, there was another school that we haven't considered in this, probably inadvertently maybe because it had no colored children living in that area at all, and that's the one that caused some comment after the other meeting, so I would like to bring that out.

(The Court) Which school is that?

(The Witness) That is one we call our Slate Ridge School up along the Pennsylvania line. Last spring — I don't know about now — but there were no colored families at all in the school area.

(The Court) Well, there were no applications for that.

(The Witness) No applications for that, Your Honor, no, but that is the one that caused some comment.

(The Court) Now, of course, the child who applied for Darlington, with respect to that one, I understand that there was no administrative reason for not admitting that child to Darlington, but you refused to admit that child to Darlington as a matter of social policy or judgment as to how fast the plan should be put into effect; is that right?

(The Witness) I think that's correct.

(The Court) Or substantially that.

(The Witness) Yes.

(The Court) I haven't read the testimony, but I don't understand that any contention is made for any other reason at Darlington.

Now, there are other schools which you claim were overcrowded in 1956 but to which you proposed to admit students in the fall of 1957.

Now, what are those elementary schools?

(The Witness) Well, one would be Emmorton.

(The Court) Emmorton?

(The Witness) Yes.

(The Court) All right.

(The Witness) Another one would be the Aberdeen Elementary School. Another one would be the Youth Benefit Elementary School.

(The Court) Youth Benefit?

(The Witness) Yes, Youth Benefit School.

(The Court) Y-o-u-t-h?

(The Witness) Yes.

Churchville. Slate Ridge, of course, would be in that category.

(The Court) Well, I have that.

(The Witness) You have that. I don't know whether anyone lives in that area or not.

(The Court) Well, let's put Slate Ridge in there.

(The Witness) Because it really is in there.

(The Court) Let's put it in this one and take it out of the other because we only talked about two last year, and I think we better keep those two which were the ones that were discussed in connection with the policy, and we will put Slate Ridge in one that will be in 1957. It doesn't make much difference because there were no applications.

Now, what else?

(The Witness) Another one is Darlington.

(The Court) Well, Darlington is already in the non-overcrowded.

Do you propose to admit them to Darlington this year?

(The Witness) Yes.

(The Court) And they would be added to this list?

(The Witness) Yes.

Do you propose to admit them to Darlington this year?

(The Witness) Yes.

(The Court) And they would be added to this list?

(The Witness) Yes.

(The Court) And these are additional ones?

(The Witness) Yes. The other one would be Havre de Grace, which includes a special school which is an annex down there.

(The Court) Is that all the schools to which they will be admitted?

(The Witness) How many do you have on your list?

(The Court) I have seven.

(Mr. Barnes) Seven.

(The Witness) Seven.

(The Court) I have six new ones and four old ones.

(The Witness) That would be ten.

(The Witness) That would be ten. That is, Edgewood, Halls Cross Roads, Darlington, Perryman. That is four.

And then Emmorton, Aberdeen, Youth Benefit, Churchville, Slate Ridge and Havre de Grace.

(The Witness) The sixth grade, considering this policy of the Board, the Board considered all elementary grades, so they also included in this the sixth grade in the Aberdeen High School.

(The Court) The Aberdeen High School, and the sixth grade.

(The Witness) Yes, in the Aberdeen High School, which we operate as part of the Elementary School. We have a separate administrative set-up for it.

(The Court) All right. Aberdeen Elementary including the sixth grade at Aberdeen High.

(The Witness) Yes, sir. That makes one more.

(The Court) Does it include the sixth grade at the Edgewood School?

(The Witness) No, sir, because that school is considerably overcrowded, the building is overcrowded.

(The Court) So that the Edgewood Elementary does not include the sixth grade at Edgewood High School.

Now, how many schools are you excepting from your plan for the fall of 1957?

(The Witness) Seven.

(The Court) What are they?

(The Witness) Old Post Road, which is twenty-four percent overcrowded, over-capacity on February 1st.

(The Court) Old Post Road, twenty-four percent?

(The Witness) Yes, over-capacity on February 1st.

(The Court) Now, when you say "over-capacity" you are dividing what by what?

(The Witness) Well, we are taking the number of rooms and multiplying by thirty, the number of class rooms and multiplying by thirty, and that would be the capacity.

The number of children there would be the difference between that, or the number of children would give you the number of children of the percentage over.

(The Court) Old Post Road, twenty-four percent overcrowded.

(The Witness) Yes.

(The Court) February 1957.

(The Witness) These are all February 1st figures.

The Edgewood sixth grade, which is housed in the Edgewood High School, which was twelve percent overcrowded as of that date.

Now, that school will be considerably more overcrowded this year because we will hold every child that is there and bring in another sixth grade.

(The Court) There will be one additional grade.

(The Witness) Yes, so that will increase the capacity much more than it is, increase the number of children much more than it is at the present time.

The next exclusion is Forest Hill, which was seventeen percent overcrowded at that time.

(The Court) All right.

(The Witness) Bel Air, which was fourteen percent overcrowded; Jarrettsville which was just a little over ten percent; Dublin which is sixteen percent — excuse me, that would be Highland which is sixteen percent. Dublin would be fourteen.

(The Court) All right. Dublin would be fourteen.

(The Witness) Highland would be sixteen.

That's seven, I believe.

(The Court) That makes eighteen elementary if you include the two sixth grades.

(The Witness) Yes. That would be eleven and seven.

Your Honor, I might mention something here that you probably would like to know and that is in thinking of it last year, the Board considered the capacity on thirty pupils. This year they considered overcrowding as a ten percent overage as of a certain date and these figures would tend to be five to ten percent higher in September.

* * * * * *

(R. 235): Tuesday, June 11, 1957

(Mrs. Mitchell) Your Honor, there has just been received this last resolution, and it is the first knowledge we have received of any action of the Board of Education of Harford County, and we would like to have the opportunity to go over the contents of the resolution which was enacted on June 5, 1957, because we have not had an opportunity to confer about it.

(The Court) Well, a copy was given to me about five minutes ago; so we are in about the same situation.

(Mr. Barnes) I may say that I called counsel yesterday afternoon, but unfortunately neither of them were in their office, and I did call Mr. Dearing this morning early to see if the plaintiffs had gotten a copy by mail.

* * * * * *

(R. 249-250):

CHARLES W. WILLIS,

a witness previously called for and on behalf of the defendants resumed the witness-stand and testified further as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Willis, it has already appeared in the evidence that you are Superintendent of Schools of Harford County? A. Yes.

Q. And you testified in the hearing before His Honor on April 18th, 1957, did you not? A. Yes.

* * * * * *

(R. 251-254):

Q. (Mr. Barnes) Now, Mr. Willis, I show you a document entitled "Excerpt from the Minutes of the Regular May Meeting of the Board of Education of Harford County" dated May 1st, 1957. Are you familiar with that excerpt from the minutes? A. I am, yes.

(Mr. Barnes) I would like to offer this in evidence.

Q. (Mr. Barnes) Let me ask you this: At the time of this meeting, was there a quorum of the Board present? A. Yes, there was.

Q. And this was duly passed as a resolution of the Board of Education of Harford County? A. Yes.

(Mr. Barnes) I would like to offer this in evidence as Defendants' Exhibit 14.

(Mr. Greenberg) I don't believe I have a copy of it. May I see it?

(Mr. Barnes) Oh, I am sorry.

(The Court) Mr. Barnes gave me a copy of all these things this morning and left them with my secretary before court.

(Mr. Barnes) Yes.

(The Court) So I have a copy of what has been offered.

("Excerpt of Minutes of Meeting of Board May 1st, 1957" was marked Defendants' Exhibit 14.)

Q. (Mr. Barnes) Now, Mr. Willis, I think the minutes speak for themselves, but would you explain to the Court the purpose of that minute? A. This minute was considered and written in this form to clarify and make specific the policy passed at the February meeting. This had been — the February 6th — this plan had been discussed before the State Board of Education and in this court, and this is no deviation from it.

Really it is not intended to be a deviation, but it is intended to make specific what was considered to be somewhat vague from the original policy statement.

Q. Now, I did note that in Defendants' Exhibit 14 that you did state that "In accordance with this plan, the following elementary schools will be open in all six grades for Negro pupils at the beginning of the 1957-1958 school year," this year.

Why did you use the word "Negro" there? Any particular reason? A. None other than clarification, and to be specific, that was the purpose of this whole statement of May 1st.

Q. Now, then, what did you do with this resolution or excerpt from the minutes of May 1, 1957? Did you give it to any official group in the Harford County School system? A. No, because there was nothing new about this. We did give it to our principals.

Q. That's what I mean. A. At their meeting a few days later; I believe it was May 9th.

Once a month we have all of our principals in for a meeting. We gave this to them because they were particularly concerned with which schools would be opened and about registrations.

We also gave them another statement which was similar to the advertisement that appeared in the paper because they had to accept the first grade registrations later in that month. I believe the date is there; I don't have it. The 24th of May, I think.

Q. The date of publication? A. No, the date of registration for first grade.

Q. I think it's the 24th. A. It's on the advertisement.

Q. The 24th.

(Mr. Barnes) If Your Honor please, just to keep the sequence in order, I would like to offer in evidence the letter of May 2d, 1957 from Mrs. Juanita Jackson Mitchell to me, the letter dated, I believe I said May 2d, 1957, and received by me on May 3d, 1957 as Defendants' Exhibit 15.

(Letter Mitchell to Barnes dated May 2, 1957 was marked Defendants' Exhibit 15.)

Q. (Mr. Barnes) Now, Mr. Willis, I think you said you published this notice in the papers of Harford County, the local papers on May 16th, 1957.

Is this a copy of that notice? A. Yes, it is.

* * * * * *

(R. 255-268):

(The Witness) May I make a statement for the record?

I am not sure that I gave out that advertisement as written to the principals. We gave out this policy, but I am not sure I gave that advertisement. I am not sure I did. In fact, I think we talked about it on the basis, on that basis rather than my giving them that paper.

Q. (Mr. Barnes) Now, I show you an excerpt from the minutes of the regular June meeting of the Board of Edu-

cation of Harford County dated June 5, 1957. Are you familiar with that, Mr. Willis? A. I am, yes.

Q. Was that passed by the Board at a meeting at which there was a quorum present? A. Yes, it was.

Q. And it represents the official action of the Board of Education of Harford County? A. That's correct.

(Mr. Barnes) We would like to offer this in evidence as Defendants' Exhibit No. 16.

(The Clerk) Defendants' Exhibit 16.

(Excerpt from minutes of regular June meeting, Board of Education Harford County dated June 5th, 1957 was marked Defendants' Exhibit 16.)

Q. (Mr. Barnes) Now, Mr. Willis, I would like you to state in your own words how this modification, I suppose we could call it — it's a good word, if Your Honor please — the modification of the plan in regard to the high schools of Harford County during the interim period, how that will practically operate in Harford County? A. There were several points brought up by Mr. Greenberg that we had not considered. The first one was about the seventh grade. When this plan was passed, the Board was thinking in terms of transfers to all high school grades.

Now, actually the way it is written, it says, "Transfers will be considered for admission to the high schools of Harford County."

That was meant to include all sixth grades.

(The Court) You mean it was intended to include admission to the seventh grade?

(The Witness) Yes.

(The Court) As well as transfers to the—

(The Witness) That is correct.

(The Court) —to the eighth grade?

(The Witness) Yes, and I believe actually it is written that way, that their transfers will be considered for admission to the high schools, whether you consider a transfer from the sixth to the seventh as being, not being a transfer, and we didn't think of it in that way as being to all six grades in the high school.

The way it would work practically would be that anyone who wanted to request such a transfer could get the necessary form from our office because the schools would be closed before this would become effective, and return it, fill it out and return it by July 15th.

It would then be considered by a committee of five people; the principal of the school last attended by the child, the principal of the school to which the child was requesting the transfer, the Director of Instruction, who is the head of our supervisory staff.

He actually would be under the heading of a supervisor, but we spell it out to make it specific, and the supervisors from our office who work in the two schools concerned, the sending school and the receiving school.

(The Court) Are the supervisors who work in the Negro schools Negro?

(The Witness) No, sir.

(The Court) Not any?

(The Witness) We did have — no, sir, we only have the two schools there, and the last Negro supervisor became principal of a larger high school, or became principal of the largest consolidated school that we have when we opened it several years ago.

(The Court) You have had Negro supervisors, but you have not now?

(The Witness) We had only two in my twelve years, but we don't have any now.

Q. (Mr. Barnes) Now, Mr. Willis, before we leave that subject, why did you select or why did the Board select

the two principals from the respective schools as part of the personnel making up the committee? What was the reason or rationale of that? A. Well, the basis of this whole policy would be the individual pupils' adjustment and the probable success. Unfortunately high school teachers are subject-minded rather than children-minded.

Now, I am afraid that I am getting into a pedagogical statement here, but I believe some people in this room at least will understand what I am saying.

Elementary teachers think of the children they have and working with them to develop. I am afraid too many high school teachers think only in terms of the subject matter they are teaching and have a tendency to forget the children that they are trying to teach and not the subject before them.

(The Court) Some people would maybe like to mix them up a little and increase the percentage in each, increase the percentage of the opposite in each.

(The Witness) Well, probably, but any rate, the child's adjustment is more in his own hands in high school than it is in elementary school, and we wanted the principal of the school, the sending school on such a committee even if he weren't there otherwise because he would have the best knowledge of that individual as to his personality and the probability of his successful adjustment.

Now, as far as the test results are concerned, we have a rather extensive testing program in 99 percent of the cases at least, and would already have that information. We might want to supplement it. I don't know. That would depend upon the committee and its action.

Q. (Mr. Barnes) In the school heirarchy, where is the director of instruction? A. Well, in our case, the director of instruction is over the supervisory staff and the curriculum development program. As it indicates, he is in charge of instruction in all levels in our school system.

Q. He is directly under you? A. Yes.

Q. And then the County Supervisors, where are they in the school heirarchy? They direct the instructors? A. Yes, and they work with the teachers in the school and in some cases with the children.

Now, I dare say they would know the greatest problem cases, and the very best ones. The mass of them they would not know because their work is with the teachers, and in our case we try to keep that from about sixty to a hundred teachers per supervisor.

Q. Now, this plan would apply to either the white or colored children desiring a transfer; is that correct, Mr. Willis? A. It would have to, yes, because it doesn't state any particular kind.

At the present time we get very few requests from white children. Most of them are from outside the county, such as those in Baltimore County who want to comeup, and we have had a lot of trouble in the past, and this would help us in that area.

Q. Well, it would apply to the white children who wish a transfer the same as colored children? A. It would have to from now on, yes.

Q. And "these applications would be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation.

"This will include, but not be limited to the results of both standardized intelligence and achievement tests, with due consideration being given to grade lever achievement, both with respect to ability and with respect to the grade into which transfer is being requested."

Now, how would that operate practically, Mr. Willis? A. Well, I would say that as applications come in, that this group would get from the school, and it would be very easy because the principal has charge of the records at the school, to get the folder on that child, which has in it his

achievements all the way through school up to that time, and his test record.

The only reason that might not be complete would be if he missed time when the regular testing program was being carried on or unless he were transferring into our system at some recent date.

And in some cases these folders would also contain anecdotal records of — I hate to say "problems" but I am afraid most of them would be that, with that child.

We try to put in other things about them, but usually it gets to a point where the troublesome things get it and the good ones don't.

Q. Well, that's typical of life. A. I better continue.

Q. Yes. A. Those records would then be made available for the full committee who should consider each individual case on the basis of the records involved.

Q. Now, I believe the resolution of May 1st, 1957, Defendants' Exhibit 14, which clarified the elementary school plan, stated that:

> "As a normal result of this plan sixth grade graduates will be admitted to the junior high schools for the first of September 1958 and proceed through high school to the next higher grade each year. This will completely desegregate all the schools of Harford County by September 1963."

Now, I note that in the resolution of June 5th, 1957, Defendants' Exhibit No. 16, that this plan of transfer operates immediately.

Now, would you explain how a child who is in the sixth grade at the present time would normally go into the seventh grade automatically; is that correct? A. You mean next year?

Q. Yes. A. Well, let's suppose a child attended the sixth grade in the Aberdeen Elementary School next year, there

would be no question of any transfer there because he would be moving along with his class.

If he were in the sixth grade of the Central Consolidated School, or rather if he were in the sixth grade of the Havre de Grace Consolidated School, which would be serving that same area, then I would think that he would have to make a request for transfer the following year so that we would know how to plan for his placement in the fall of that year.

(The Court) Well, that is complicated by the fact that the sixth grade — there is a sixth grade in the Aberdeen High School.

(The Witness) Yes.

(The Court) You better take a more typical example or case.

(The Witness) Well, it would be so, but let me look at my sheet.

If there were one in the Halls Cross Roads Elementary School, which is that same area, it would still be the same situation.

I didn't mean to complicate it; I meant to simplify it.

(The Court) Well, let me get this clear. Beginning in 1958, do I understand that your plan contemplates that a child graduating from the sixth grade in the Havre de Grace Consolidated School, and a child graduating from the sixth grade in some other elementary school as—

(The Witness) Well, Halls Cross Roads.

(The Court) —Halls Cross Roads Elementary School, which is a white school, that those two sixth graders will be able to go to a presently white high school on exactly the same basis?

(The Witness) That's correct.

(The Court) Without any different evaluation of one from the other?

(The Witness) That's correct.

(The Court) And that the child who graduates from the sixth grade in the Consolidated School, if he happens to have gone there, can continue in that Consolidated School to the seventh grade or can go through a white school on the same basis, that if he would be admitted to one, he would be admitted to the other.

(The Witness) The only difference would be that we would have to know he wanted to go there.

(The Court) Well, there would be an application.

(The Witness) There wouldn't be in the case of the white school because we would assume he wanted to go there.

(The Court) But there would be no further tests,—

(The Witness) That's correct.

(The Court) —of any sort applied to any such entrant into a seventh grade beginning in September 1958; is that my understanding?

(The Witness) That's correct.

(The Court) And that is still the plan? I mean, the modification does not change it?

(The Witness) Does not change that, no.

(The Court) Do I understand that the modification applies only during the period of transition?

(The Witness) During the interim period, yes.

(Mr. Barnes) Yes.

(The Witness) During the interim period, yes.

(The Court) This applies to the admission of the seventh grade only during the interim period?

(The Witness) Yes.

(The Court) Now, may I get this clear: You say that the plan will apply to white students as well as colored students?

(The Witness) The only one I can think of would be one coming from another county.

(The Court) Yes.

(Mr. Greenberg) Yes.

(The Court) Well, let me get this clear: Is the June 5th, 1957 plan or modification of the plan entirely a transition period plan and is expected to terminate grade by grade so that it will be entirely out of the picture by 1963?

(The Witness) Insofar as Negro pupils are concerned, but if we find that it works with these other cases that have been somewhat of a problem, we probably will continue it with them.

(The Court) So that it is only intended to apply to transfers during the interim period?

(The Witness) That is correct.

(The Court) And that after the interim period your plan is that Negro students may transfer from school to school on the same basis as white children?

(The Witness) Yes.

(The Court) Now, there is one thing that isn't clear to me: In the second paragraph of your excerpt which Mr. Barnes has just read, it says:

> "Transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education."

Now, I want to see how that applies. Does that mean that a colored child who lives nearer the Hickory School than he does to Bel Air, let us say, must attend Hickory and may not transfer to Bel Air under any circumstances, or is this nearer his home a limitation, or is that intended to be a limitation?

(The Witness) Well, the reason that was put in there is because this is our policy in all other cases, in all other children, in all other high school areas.

For instance, children in Edgewood must go to Edgewood and not to Bel Air, and we have some basic problems within the County on that in the white schools.

* * * * * *

(R. 344):

EXCERPT FROM DEFENDANTS' ANSWER EXHIBIT NO. 1

At a Meeting of the Harford County Citizens Consultant Committee held on Monday, February 27th, 1956, at 8 P. M. at Bel Air, Maryland, it was unanimously RESOLVED

To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

ERNEST VOLKART,

Chairman.

Certified True and Correct.

/s/ CHARLES W. WILLIS,

Secretary-Treasurer.

copy: dh

Adopted by the Harford County Board of Education, as submitted, at its regular meeting on March 7, 1956.

/s/ CHARLES W. WILLIS,

Secretary-Treasurer.

(Seal)

(R. 346):

DEFENDANTS' ANSWER EXHIBIT NO. 2

Dated: June 14, 1956

BOARD OF EDUCATION OF HARFORD COUNTY

BEL AIR, MARYLAND

TRANSFER POLICY

If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956.

(R. 348):

DEFENDANTS' ANSWER EXHIBIT NO. 3

Desegregation Policy

Adopted by the Harford County Board of Education

August 1, 1956

The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard subcommittee reports, discussed many aspects of the problem, and unanimously resolved:

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

This resolution was adopted by the Board of Education at its regular March meeting.

At the regular June meeting of the Board of Education, a transfer policy was adopted, and procedures for requesting transfers were established.

The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens' Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies

based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps.

(R. 360-361):

DEFENDANTS' ANSWER EXHIBIT NO. 8

"The Daily Record" — Wednesday

June 29, 1955

June 20, 1955.

Dr. Thomas G. Pullen, Jr.,
State Superintendent of Schools.

You have asked us to advise you formally of our views with respect to the legal effect of the decision of the Supreme Court, and particularly of its opinion and decree of May 31, 1955, in Brown et al. v. Board of Education of Topeka et al. In that connection, you state in your letter in reference to our earlier oral conferences: "* * * As I understand your position, by virtue of the decree all constitutional and legislative acts requiring segregation in the State of Maryland are a nullity, and further, it is legally incumbent upon the school authorities of the State and local school systems 'to make a prompt and reasonable start toward full compliance' with the ruling of the Supreme Court on May 17, 1954."

As is obvious from your statement, the Supreme Court rendered its first opinion in the Brown et al. cases on May 17, 1954, and while it then held that racial discrimination in public education is unconstitutional, it deferred final action on the cases pending further argument on certain specific questions having to do with the form of decree which the Court should enter. In its second opinion, rendered May 31, 1955, the Court took final action on the judgments under review and remanded the cases to the Courts of origin to take such proceedings and enter such orders and decrees as would be consistent with the supplemental views expressed in the May 31, 1955, opinion.

In its May 31, 1955, opinion, the Court stated at the outset:

"These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional

are incorporated herein by reference. *All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.*" (Italics supplied.)

We believe that the two opinions of the Supreme Court in the Brown et al. cases mean just what they say, namely, that "All provisions of federal, state, or local law requiring or permitting such discrimination(racial discrimination) must yield * * *" to the principle that such discrimination in public education is unconstitutional. It would necessarily follow that, since the Constitution of the United States is the supreme law of the land, all constitutional and legislative acts of Maryland requiring segregation in the public schools in the State of Maryland are unconstitutional, and hence must be treated as nullities.

In its opinion of May 31, 1955, the Supreme Court directed the United States District Courts to require "* * * that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling." It is true that this statement was made with respect to five consolidated cases in which neither the State of Maryland nor any administrative body or officer thereof was a party, although the State did participate in the argument of the case as *amicus curiae*. It might be argued that since the State of Maryland was not technically a party, the direction of the Supreme Court is not yet applicable to the State of Maryland, and that such direction would not be applicable until such time as suit is filed against the State or some educational official and a final order making the direction applicable entered in such suit.

This argument to our mind confounds what is the clear state of the law and the nature of the relief which may be afforded in the event that there is not full compliance with the law. Obviously, in the event that there is a refusal to comply with the law, the mechanics of the relief might be different in the case of the State of Maryland from that granted in the case of one of the other States which was a defendant in one of the five consolidated cases in which

the Supreme Court acted. However, the law with respect to public education as laid down by the Supreme Court is crystal clear, and we do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make "* * * a prompt and reasonable start" toward the ultimate elimination of racial discrimination in public education.

C. FERDINAND SYBERT,

Attorney General.

HARRISON L. WINTER,

Deputy Attorney General.

(R. 363-364):

DEFENDANTS' ANSWER EXHIBIT NO. 9

June 22, 1955

JOINT RESOLUTION OF THE STATE BOARD OF EDUCATION OF MARYLAND AND THE BOARD OF TRUSTEES OF THE STATE TEACHERS COLLEGES OF MARYLAND.

(The members of the State Board of Education and the State Superintendent of Schools comprise the Board of Trustees of the State Teachers Colleges.)

WHEREAS, The Supreme Court of the United States passed its final judgment and decree on May 31, 1955, in the consolidated group of public school cases, determining the procedure to put into effect the Court's opinion of May 17, 1954, that the 14th Amendment of the Constitution of the United States, prohibiting any State from denying to any person within its jurisdiction the equal protection of the laws, is no longer satisfied by the former doctrine of separate but equal public school facilities, but now, on the contrary, prohibits any State from requiring or permitting racial discrimination in public education; and

WHEREAS, the Attorney General of Maryland has advised that the final decision of the Supreme Court is now the law of the land and is automatically binding upon the public school system of Maryland and upon the several local school officials throughout the State, and that the State Courts and the Federal Courts, should cases arise, are bound by the decision of the Supreme Court to recognize and give full force and effect thereto in the light of the equitable procedural considerations announced by the Supreme Court.

Therefore RESOLVED by The State Board of Education of Maryland and The Board of Trustees of the State Teachers Colleges of Maryland, in joint session, pursuant to the law of the land and pursuant to the procedural steps announced by The Supreme Court of the United States, and pursuant to the authority vested in these Boards by the laws of The State of Maryland, that the following are adopted as policies for guidance in the public school system of Maryland and in the several geographic units throughout the State of Maryland, namely that:

1. It is recognized that the law of the land as announced by The Supreme Court of the United States automatically has had the effect of abolishing all laws of the State of Maryland which raised any distinction according to race in the public school system of the State of Maryland and of its local subdivisions.

2. Segregation according to race is hereby abolished in all of the State Teachers Colleges of Maryland. Historically and under the former practice of separate but equal facilities the present five State Teachers Colleges have heretofore been classed into three colleges for white students and two colleges for colored students. That classification is now eliminated.

3. The Supreme Court recognized, and the State Board of Education recognizes, that factual conditions vary in different localities throughout the State, growing out of the formerly established principle of separate but equal facilities, now declared to be unconstitutional and violative of

the 14th Amendment. Such conditions may include public school building facilities, locations of the same with respect to population density of residential areas, transportation problems, teaching staffs, and other local and geographic conditions if applicable and pertinent to the transition from segregation to integration.

4. The State Board of Education by its statement of May 26, 1954, recommended that the local public school officials evaluate their respective local conditions and problems in anticipation of the final decision of the Supreme Court. All of the County public school officials have made or are making such studies. Now that The Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education calls upon the local public school officials to commence this transition at the earliest practicable date, with the view of implementing the law of the land. Voluntary compliance with deliberate speed, without the necessity of Court compulsion, is advised on the part of all local public school officials throughout the State.

5. The Staff of the State Department of Education shall co-operate in all possible ways with local public school officials to give effect to the law of the land in the process of the transition from segregation to desegregation.

6. Traditionally the citizenry of our State has always accepted constitutional principles as interpreted by The Supreme Court of the United States, as the law of the land. The State Board of Education trusts that all citizens will exercise patience and tolerance to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.

(R. 367):

DEFENDANTS' EXHIBIT NO. 11

Excerpt from the Minutes of the Regular February Meeting of the Board of Education of Harford County.

February 6, 1957

Extension of the Desegregation Policy for 1957-1958

Applications for transfers will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.

Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957.

(R. 370-374):

STATE BOARD OF EDUCATION
BALTIMORE, MARYLAND

In the Matter of:

Appeal to the State Board of Education in Denial of Applications for Transfers in Harford County, Maryland.

Baltimore, Maryland

Wednesday, February 27, 1957

The above matter came on for hearing in Board Room No. 2, State Board of Education, Baltimore, Maryland, commencing at 10:30 o'clock, a.m., Wednesday, February 27, 1957.

Before: Wendell D. Allen, President, Jerome Frampton, Jr., Vice-President, Mrs. Kenneth S. Cole, Member of the Board, William A. Gunter, Member of the Board, Dwight O. W. Holmes, Member of the Board, Mrs. Richard Marcus, Member of the Board, George C. Rhoderick, Member of the Board and Thomas G. Pullen, Jr., Secretary-Treasurer.

Present Also: Miss Drusilla Chair.

Appearances:

Juanita Jackson, Esq., Tucker R. Dearing, Esq. and Robert B. Watts, Esq., on behalf of the Complainants.

Edward C. Wilson, Jr., Esq., and Wilson K. Barnes, Esq., on behalf of the Board of Education of Harford County.

Alexander Harvey, Esq., Assistant Attorney General of the State of Maryland.

Proceedings

(The Chairman) Are we ready to proceed? Are the parties here represented by counsel? Who represents the school children?

(Mrs. Mitchell) I and my associate. I am Juanita Jackson Mitchell and Mr. Deering and Marcus both are associated with me. I am waiting for Mr. Deering.

(The Chairman) Suppose we wait a few minutes until he arrives. Would you prefer that? You don't think he will be too long?

(Mrs. Mitchell) I don't think so but I think we may proceed.

(The Chairman) Proceed without him?

(Mrs. Mitchell) Yes.

(The Chairman) Is the Defendant ready?

(Mr. Barnes) We are ready.

(The Chairman) Will the reporter make a notation in the record that Mr. Alexander Harvey, Assistant Attorney General of Maryland is present as legal advisor of the State Board of Education.

Now, we have before us today, an appeal to the State Board of Education from the Harford County School Superintendent, denying applications for transfers in public schools in Harford County, Maryland, the Appeal being set forth in a letter dated December 6, 1956, addressed to the State Board of Education and signed by Tucker R. Dearing, Juanita Jackson Mitchell and Robert B. Watts, attorneys for the Appellants.

Appellants are Dennis Bernard Spriggs, age twelve; Stephen Presbury Moore, III, age ten; Earlene Scott, age seven; Mona Leisia Scott, age six; Robert McDaniel, age ten; David Roland Bell, age six; James J. Bell, Jr., age six; Bernard Samuel Blackstone, age eleven; Larry Wilson Blackstone, age fifteen; Ellen Elizabeth Blackstone, age nine; Aurelia H. Boose, age nine; Maurice L. Horsey, III, age seven.

Now, I ask you, Mrs. Mitchell, are they the twelve Appellants? There is no change in the list of twelve Appellants?

(Mr. Deering) I believe one has gone overseas.

(Mrs. Mitchell) That is Aurelia H. Boose.

(The Chairman) Make a notation that the Counsel for Appellants have eliminated the eleventh child, Aurelia H. Boose, for the reason that—

(Mrs. Mitchell) Her father is a Colonel in the Armed Services and has now been sent overseas.

* * * * * *

(R. 443-445):

CHARLES W. WILLIS,

was called as a witness by and on behalf of the County School Board, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Willis, will you state your full name, please? A. Charles W. Willis.

Q. What is your official position? A Superintendent of Schools, Harford County.

Q. How long have you been in that position? A. Almost twelve years.

Q. What is your educational background? A. Going clear back, a graduate of Chestertown High School in Kent County in 1926; Western Maryland College in 1930; Masters from Columbia in 1934; and I have completed the work for Doctorate at Columbia, which is dependent upon my completion of a thesis.

Q. At Western Maryland, did you specialize in Education? A. Yes, sir.

Q. You were then the Superintendent of Schools for Harford County in 1955, is that correct? A. That is correct.

Q. After the opinion of the Attorney General of Maryland to Dr. Pullen on June 20, 1955, what did the Board of Education of Harford County do, just briefly? A. The Board of Education met on, I think it was June 30. They had their regular July meeting a couple of days ahead of time at my request. I wished to be away during that month at summer school, and at that session of the Board, they appointed an Advisory Committee to study the problem of integrating the schools of Harford County and asked them to report back to the Board of Education when they made a study of this problem.

That Committee consisted of thirty-five members, six of whom were Negroes, and the Chairman is Mr. Ernest Volkart, who has been previously mentioned this morning.

Q. And you were not a member of the Citizens Committee, were you? A. No, sir. The Board particularly wished that I not meet with them and appointed my Assistant Superintendent, Mr. Benjamin S. Carroll, to meet with the Citizens Consultant Committee. He, however, was in the hospital and unable to meet with them at one of their meetings, and I attended that one.

Q. Well now, I direct your attention to February 27, 1956. Do you recall that date? A. I do.

Q. That is the date that the Citizens Consultant Committee met and adopted a resolution. Are you familiar with that resolution? A. I am.

Q. Do you have a copy of it with you? A. Yes, I do.

Q. I would like to offer that in evidence as Defendant's Exhibit No. 1.

* * * * * *

(R. 446-447):

Q. (Mr. Barnes) What action if any, did the Board of Education in Harford County take on that Resolution? A. They approved that resolution at the regular meeting in March.

Q. March 7, 1956. Is that correct? A. That is correct.

Q. Now, I direct your attention to June 14, 1956, Mr. Willis, and particularly to the Transfer Policy announced by the Board of Education of Harford County on that date.

Do you have the Transfer Policy? A. I do.

Q. I would like to offer that in evidence as Defendant's Exhibit No. 2. That was adopted by the Board of Education, June 14, 1956.

* * * * * *

(R. 448-449):

Q. * * * did you have any application for transfers, and if so, what were they? A. Well, I don't recall we had any in this year. It seems to me that there were one or two the prior summer before we had any policy — after the 1954 opinion — but I don't recall. It would be '55, in the summer of 1955. This is 1956.

Q. I am talking about this. A. None prior to this.

Q. Subsequent to this, were there any applications? A. We had 60 applications as a result of this policy.

Q. Yes; and those 60 applications conformed to the requirements which set forth your Transfer Policy, is that correct? A. That is correct.

Q. Now, Mr. Willis, what did the Board of Education do in regard to those applications for transfer? A. Well, they were considered at the August 1 meeting and at that meeting, the desegregation policy of August 1 was drawn up and used as a basis for approving or disapproving the application — disapproving the applications. This the Board considered as the first part of a desegregation plan for the reason set forth in it and there were several things that prompted that.

* * * * * *

(R. 450-454):

Q. (Mr. Barnes) Now, Mr. Willis, this Desegregation Policy mentions certain considerations which the County Board of Education formed. Will you elaborate on those factors? A. Well, one factor that we had in mind was that

after the original case had been discussed down here, I think Mr. Wilson verbally at least, talked to me and said that the proposal, that the suggestion had been made, that we probably could start this program in the areas of Edgewood and Aberdeen where we did have an influx of people and a different climate than we had in the upper part of the county. I don't know if those terms were used by I think that was one thing.

A. other thing is that we had observed a change in the climate of the thinking of our people on this question over a period of the year that they had been thinking about it. Right after the Supreme Court decision and especially after the second decision, we had one group before the Board protesting that we do anything, and we had a lot of private conversations with people and some very rabid ones, against any change, and we have a peculiar situation in Harford County, that if you don't know the county, you would hardly be expected to be familiar with it, in that we have had a great influx of people from the south in the farming regions and we had a different feeling in the farming region from the county than we would in the built-up region around the Army bases. In Edgewood and Aberdeen, and extending down to Havre de Grace. So we do have a different feeling that we have to take in consideration. I think that was probably in the mind of Judge Thomsen and our attorneys when they talked this over but that was one thing that influenced us, the difference of feeling in the different parts of the county and the difference in composition of it, with respect to backgrounds of our citizens.

Now, the other thing was a matter of school facilities. We are very proud of the fact in Harford County that we have not had double shifts or rent many buildings in recent years, while we have been having 100 percent increase in our school population in the last ten years. We had about 7,000 children ten years ago; we have 14,000 now, and during that time, we have housed them. We spent about $14 million for school construction. We are continuing that. We have a $3 million program projected half for this year and half for next year and we are getting it under

way at the present time; and we think class size is very important. That was taken into consideration by the original Citizens Committee when they put the words, school facilities, I believe, in the Resolution, that we do something with respect to available facilities.

Strictly to the interpretation of available facilities, the two schools that we integrated plus two others, were the only ones that had any available facilities according to the projections that we could make of enrollments for the following year. Those other two small schools were Perryman, where we had no applicants, and Darlington, where we had one.

Now, Darlington is very much rural and I think one child up there may have been causing us some problems. We, like the people who spoke this morning, are proud of the fact that we do not have any racial tensions in Harford County and we are trying to keep it that way and some of us have had to sit on the lid of a few fiery individuals. We all have them, and they are the kind, though, that set the spark on and drop your whole program backward, and we were very cognizant of that whole problem and we felt it would be sounder to start with the children in the lower grades, where social problems are not so great, where they can start along with one another and continue with one another and not come from diverse backgrounds and diverse systems later on. I think those were the factors which influenced the passage of this policy that you just read.

Q. And pursuant to that policy, I believe fifteen of the applications you received were granted. Is that not correct? A. That is correct.

Q. And forty-five were refused. Is that correct? A. On the basis of policy. There is one other little thing worth mentioning. One man — I think he is the one who has now moved away — removed himself away from this. Sgt. Boose came to me after school was open, and due to a misunderstanding, he had not gotten an application for his child, who was in the first grade, and we felt the misunderstanding was due to clerical help in our office, so we

immediately allowed him to fill an application and put the child in the first grade. I think he is the man who has now moved away, thought, but that indicated that we were not trying to restrict, even after the deadline, when there was a reason there for admitting the child.

Q. Now, I direct your attention to January 2, 1957, Mr. Willis; I notice at that time, that you have an excerpt from the minutes of the regular January meeting of the Board of Education of Harford County, which we would like to offer as Defendant's Exhibit No. 4.

* * * * * *

(R. 456):

Q. Now, Mr. Willis, I direct your attention to February 6, 1957, which was a regular meeting of the State Board of Education for February of this year. Did the Board take any action in regard to its desegregation policy for the next year? That is, for 1957-1958? A. Yes, and that policy is listed as the last page of this.

Q. And I would like to offer that in evidence as Defendant's Exhibit No. 5.

* * * * * *

(R. 458-462):

Q. (Mr. Barnes) Now, would you explain more fully to the Board how that desegregation policy for the ensuing year 1957-1958 would operate, Mr. Willis? A. We have nineteen schools — eighteen schools — in which we have elementary pupils; two of these are high schools in which we only have the sixth grade housed at the present time. The others are straight elementary schools, and then, in addition to those, we have had two consolidated schools at Bel Air — the Central Consolidated — and Havre de Grace Consolidated, in Havre de Grace.

Now, under this provision, all elementary schools that are not more than ten percent overcrowded as of February 1, would receive applications for transfers and that would mean that those schools would conceivably be from sixteen to twenty percent overcrowded next fall, because we have

in the county from seven to ten percent increase in enrollment each year. The amount of enrollment increase remains about constant, so the percentage is dropping a little. If you get my explanation, we have about one thousand to eleven hundred next year — and increase of one thousand to eleven hundred — on top of 14,000 which will be about a seven to eight percent increase.

Now, that is not constant at all schools in the county. It is spread out over the county; at some places it might be a ten percent increase in a school; in other places five; but in order to get a basis from which to operate, we discussed this problem and decided we better operate from a ten percent basis as of February 1. All schools not more than ten percent overcrowded, as of February 1, would receive applications for transfer into the elementary schools in the county. That would be in the first six grades, and according to our official figures as of the end of the month of January, these schools listed here are more than ten percent overcrowded. Some of them as much as twenty-five percent at the present time.

Q. Well now, would you then just for the record, compare briefly the increase, you might say, or the extension of the desegregation policy now enunciated, over the one promulgated on August 1, 1956? A. That would be for three grades in two schools and this would be for six grades in nine schools.

Q. I see. A. And if you count those two high schools, it would be eleven, really.

Q. Don't you have a building program? I think you testified you had a building program on foot which will relieve some of this overcrowding. What about that, Mr. Willis? A. Three of these schools will be relieved, we hope, by another year. We have plans to construct a four-room addition at Highland, which is one of these listed — an eight-room addition in Old Post Road, which is another, and another 24-room elementary school in Bel Air. A complete school that is not an addition.

Q. So that in those three locations, the building program would eliminate the overcrowded condition, and automatically the desegregation policy would apply. Is that not correct? A. By another year.

Q. By another year. A. By '58. By September '58, if no unforeseen developments come up in this building program.

Q. Yes. Then I think, you are going to operate a Junior College at Bel Air, are you not? A. We are planning to open one in September of this year.

Q. September of this year? On what basis would that be operated? A. On an integrated basis. Probably only one year in the beginning, though. One year beyond high school.

Q. Now, you were present at the meeting of the Board of Education of Harford County when these specific desegregation policies were adopted, were you not, Mr. Willis? A. That is correct.

Q. These matters were thoroughly and fully discussed were they not? A. Not only at these meetings, but in practically every other meeting that led up to them.

Q. Would you say that the efforts on behalf of the Board of Education to integrate schools of Harford County had moved forward on a reasonable basis? A. I would say so Yes, sir.

Q. And with all practicable and deliberate speed? A I would say so. Yes.

Q. As a matter of fact, when this new extension goes into effect, the children in the normal course of events in the schools which had been integrated will move forward, assuming they pass their courses; right on forward, will they not? A. That would be the minimum movement.

Q. The minimum movement? A. Yes.

* * * * * *

(R. 515-516):

DAVID G. HARRY, JR.,

was called as a witness, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Will you give your full name, please? A. David G. Harry, Jr.

Q. What is your official position? A. President of the Board of Education of Harford County.

Q. How long have you been in that position? A. Almost six years.

Q. You were there in office as President of the Board in 1954 and 1955. Is that not correct? A. I was.

Q. You have been in this Board Room during this entire hearing, have you not? A. I have.

Q. You heard the testimony of Mr. Willis, the Superintendent? A. I did.

Q. Was the testimony which he gave correct? A. It was.

Q. Do you have anything to add to that, or to change it? If so, will you now give it? A. I have nothing to add or change.

* * * * * *

(R. 530):

(The Chairman) Could I ask a question as to the action of the Citizens Consultant Committee? I understand there were five Negroes on that Committee and about thirty white members of that Committee. Was there any minority report of the Citizens Consultant Committee?

(Mr. Willis) No, there was not. There were six Negroes and I think thirty others, counting Mr. Volkart. There were thirty-six members, and there was no minority report sub-

mitted. This was the only report officially which the Committee submitted.

(The Chairman) Did you happen to know if this was a unanimous report of the Committee.

(Mr. Willis) It was. That evening, it was a unanimous report of the Committee.

* * * * * *

(R. 567-571):

DEFENDANTS' EXHIBIT NO. 13

Appeals

Before the State Board of Education of Maryland

Dennis Bernard Spriggs, Stephen Presbury Moore, III, Earlene Scott, Mona Leisia Scott, Robert McDaniel, David Roland Bell, James J. Bell, Jr., Bernard Samuel Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, Maurice L. Horsey, III, Minors, by their parents,

vs.

Charles W. Willis,
County Superintendent of Schools
of Harford County.

OPINION AND ORDER, MARCH 4, 1957.

These appeals were filed by the above-named eleven colored children through their respective parents, to the State Board of Education, on December 6, 1956, from the refusal of the Harford County Superintendent of Schools to grant applications for transfer to other schools. These

applications had been made in due course for the opening of school in Harford County in September, 1956. The appeal of a twelfth child, Aurelia H. Boose, was dismissed, as the parents had moved from the County.

An open hearing was held on the appeals on February 27, 1957, by the State Board of Education, the appellants being represented by three attorneys, Tucker R. Dearing, Juanita Jackson Mitchell, and Robert B. Watts. The defendant County Superintendent was represented by two attorneys, Wilson K. Barnes and Edward C. Wilson, Jr. Alexander Harvey, II, Assistant Attorney General of Maryland, appeared as legal advisor to the State Board.

Testimony was taken and recorded, and arguments were heard.

Facts respecting the eleven appellants:

Name	*Grade in Fall of 1956*	*School Attended in Fall of 1956*	*School to Which the County Superintendent Disapproved Transfer*
Dennis Bernard Spriggs	7	Central Consolidated	Edgewood High
Stephen Presbury Moore, III	5	Central Consolidated	Bel Air Elementary
Earlene Scott	2	Central Consolidated	Bel Air Elementary
Mona Leisia Scott	1	Central Consolidated	Bel Air Elementary
Robert McDaniel	4	Central Consolidated	Edgewood Elementary
David Roland Bell	1	Central Consolidated	Youth's Benefit Elementary
James J. Bell, Jr.	3	Central Consolidated	Youth's Benefit Elementary
Bernard Samuel Blackstone	6	Central Consolidated	Bel Air Elementary
Larry Wilson Blackstone	10	Central Consolidated	Bel Air High
Ellen Elizabeth Blackstone	5	Central Consolidated	Bel Air Elementary
Maurice L. Horsey, III	2	Central Consolidated	Jarrettsville Elementary

The Harford County Board of Education adopted the following Desegregation Policy on August 1, 1956:

"The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard subcommittee reports, discussed many aspects of the problem, and unanimously resolved:

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

This resolution was adopted by the Board of Education at its regular March meeting.

"At the regular June meeting of the Board of Education, a transfer policy was adopted, and procedures for requesting transfers were established.

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens' Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all

of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

An excerpt from the Minutes of the Regular February Meeting of the Board of Education of Harford County, February 6, 1957, entitled "Extension of the Desegregation Policy for 1957-1958," is as follows:

"Applications for transfer will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.

"Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road,

Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

"All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

Sixty colored children applied for transfers to various schools for the September, 1956, opening, of which fifteen applications were approved and forty-five disapproved. The disapproval of the forty-five applications, including the eleven appellants in these appeals, was in accordance with the Desegregation Policy of August 1, 1956.

The State Board finds that the Harford County Board acted within the policy established by the State Board in its Joint Resolution of June 22, 1955, on the subject of Desegregation in the Public Schools and in the State Teachers Colleges of Maryland.

The State Board finds that the County Superintendent acted in good faith within the authority set forth in the August 1, 1956, Desegregation Policy adopted by the County Board of Education. The State Board also finds that the Desegregation Policy was adopted in a bona fide effort to make a reasonable start toward actual desegregation of the Harford County public schools. This initial effort has been carried out without any untoward incidents, which is a credit to the citizens of Harford County, the Citizens' Consultant Committee, and the Harford County public school authorities.

The State Board also takes cognizance of the resolution of the County Board of February 6, 1957, as above mentioned, which sets forth an extension of desegregation to become effective in the fall of 1957, as well as the testimony to the effect that the proposed Harford County Junior College, which is to be established in Bel Air in the fall of

1957, will open on a desegregated basis, and also the testimony to the effect that the present program of new buildings and additions will make further desegregation possible.

The State Board commends all parties, the witnesses, and counsel, in these proceedings, for the fair and dispassionate manner in which the facts and the arguments were presented.

For the foregoing reasons, these appeals are hereby dismissed.

WENDELL D. ALLEN,
President,

JEROME FRAMPTOM, JR.,
Vice-president,

ELIZABETH R. COLE,
WILLIAM A. GUNTER,
DWIGHT O. W. HOLMES,
RUTH L. MARCUS,
GEORGE C. RHODERICK, JR.,
State Board of
Education of Maryland.

(R. 572-573):

DEFENDANTS' EXHIBIT NO. 14

EXCERPT FROM THE MINUTES OF THE REGULAR MAY MEETING OF THE BOARD OF EDUCATION OF HARFORD COUNTY.

May 1, 1957

The Board reviewed its desegregation policy of February 6, 1957. In accordance with this plan, the following elementary schools will be open in all six grades to Negro pupils at the beginning of the 1957-1958 school year:

Emmorton Elementary School

Edgewood Elementary School

Aberdeen Elementary School
Halls Cross Roads Elementary School
Perryman Elementary School
Churchville Elementary School
Youth's Benefit Elementary School
Slate Ridge Elementary School
Darlington Elementary School
Havre de Grace Elementary School
6th Grade at Aberdeen High School

Schools now under construction or contemplated for construction in 1958, if no unforeseen delays occur, will automatically open all elementary schools to Negro pupils by September, 1959. As a result of new construction, the elementary schools at Old Post Road, Bel Air, and Highland will accept applications for transfer of Negro pupils for the school year beginning in September, 1958. Forest Hill, Jarrettsville, Dublin and the sixth grade at the Edgewood High School would receive applications for the school year beginning in September, 1959.

As a normal result of this plant, sixth grade graduates will be admitted to junior high schools for the first time in September, 1958 and will proceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963.

The Board will continue to review this situation monthly and may consider earlier admittance of Negro pupils to the white high schools if such seems feasible. The Board reaffirmed its support of this plan as approved by the State Board of Education.

(R. 574):

DEFENDANTS' EXHIBIT NO. 15

May 2, 1957

Wilson K. Barnes, Esq.
Maryland Trust Building
Baltimore 2, Maryland

Re: Stephen Moore, Jr., et al
vs.
Board of Education of
Harford County, et al,
Civil Action No. 9105.

My dear Mr. Barnes:

After conference with my co-counsel and the plaintiffs in the above entitled case, we have come to the conclusion that there is no legally valid reason why the plaintiffs and the class they represent should not be admitted to the high schools of Harford County without any racial restrictions whatsoever.

Kindly let us hear from you at your earliest convenience so that we may put the case in for further hearing and final disposition.

Very sincerely yours,

/s/ JUANITA JACKSON MITCHELL

(R. 575):

DEFENDANTS' EXHIBIT NO. 16

Excerpt from the Minutes of the Regular June Meeting of the Board of Education of Harford County.

June 5, 1957

The Board reaffirmed its basic plan for the desegregation of Harford County schools, but agreed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application well be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

The Board of Education and its professional staff will keep this problem under constant and continuous observation and study.

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IN THE

Supreme Court of the United States

October Term, 1957

No. 999

ROSALIND SLADE, *et al.*,

Petitioners,

—v.—

BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

THURGOOD MARSHALL
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IN THE

Supreme Court of the United States

October Term, 1957

No. .....

ROSALIND SLADE, *et al.*,

Petitioners,

—v.—

BOARD OF EDUCATION OF HARFORD COUNTY, *et al.*,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above-entitled case on February 12, 1958.

Citations to Opinions Below

The opinions of the District Court are reported at 146 F. Supp. 91 and 152 F. Supp. 114 *sub nom. Moore* v. *Board of Education of Harford County;* the opinion of the Court of Appeals is reported at 252 F. 2d 291. These appear in the Appendix *infra*, at pp. 21, 33 and 17 respectively.

Jurisdiction

The judgment of the Court of Appeals was entered on February 12, 1958 (App. p. 17).[1] The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254(1).

Question Presented

Whether respondent public school officials met the constitutional burden of demonstrating adherence to this Court's direction of proceeding "with all deliberate speed" where their plan of desegregation—commencing in 1956 and extending to 1963—was delayed over that period of time because of alleged community opposition, overcrowding, and the so-called incapacity of all but specially certified Negro students to adjust to high school if admitted above the first year; while the record demonstrates that there was adequate space for Negro students and that white transferees above the first high school year need not be so certified.

Statement

This cause has been in litigation since 1955. There have been two connected suits involving four judicial hearings, a court required appeal to the State Board of Education and a number of hearings before local school officials. This cause commenced with an earlier (separate) action, see 146 F. Supp. 91, brought on behalf of some of the petitioners here to desegregate the schools in Harford County. Two days before that trial respondents adopted a resolution stating that

[1] "App." refers to the Appendix to this petition. "App. R." refers to petitioner's Appendix Record used below and filed as the record with this petition.

> "any child regardless of race may make application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools, effective for the school year beginning September, 1956" 146 F. Supp. at p. 93.

Counsel for the Board asserted "'Since that plan embraces the relief prayed for, I think that takes care of that . . .'" Id. at p. 94. Relying on the Resolution, petitioners agreed to dismiss. Ibid.

Subsequently, on August 1, 1956 respondents adopted a "Desegregation Policy." It limited Negro applicants for transfer to only the first three grades of two elementary schools in the county. Id. at p. 95.

Petitioners, therefore, on August 28, 1956, filed a fresh suit alleging that respondents were under a constitutional duty to desegregate completely and that they were estopped from retreating from their original resolution. The trial court remitted petitioners to an administrative remedy before the State Board of Education.

The petitioners (including intervenors who were granted leave to intervene, 152 F. Supp. at p. 115) filed an appeal with the State Board. While it was pending respondents again changed their policy on February 6, 1957. The new policy provided that:

> Applications for transfer will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national

standard of thirty pupils per classroom. 152 F. Supp. at p. 116.

Under the then newest plan five elementary schools and the sixth grade in two schools were opened. Ibid.

The State Board held that the plan had been adopted in good faith and constituted a reasonable start. Ibid.

At a hearing of this cause on April 18, 1957 the plan of February 6 was amplified to include ten elementary schools and the sixth grade in one school; as well as three elementary schools as of September 1958, when contemplated construction was projected to be completed. Three elementary schools and the sixth grade of a high school would commence receiving Negroes' applications in September, 1959.

At the April, 1957 hearing, the Court ruled tentatively that the plan was "generally satisfactory for the elementary grades but not for the high school grades." Ibid.

Another hearing was scheduled for June 11, 1957. On June 5th, the Board changed its plan once more and notified the parties of the change just before the hearing (App. p. 39a). The new plan—consisting of additions to the old—would permit Negro children to enter high school by a route additional to that of the earlier plan (whereby they could enter only through normal promotions from desegregated elementary schools). It would permit Negro children to be admitted only after special examination and evaluation for admission to nonsegregated high schools. 152 F. Supp. at 117.

This plan set forth below was incorporated into the decree of the district court and approved by the Court of Appeals judgment here under review. The trial court held

respondents estopped from denying admission to named plaintiffs in the first case and also ordered as follows (see the judgment, App. p. 18):

Most of the county's elementary classes were opened to Negro children transfer-applicants in accordance with specified transfer procedures which did not contemplate use of a racial standard. For the school year 1958-1959, Negro children might so transfer to three additional elementary schools; for the school year 1959-1960, they might transfer to still another three elementary schools and the sixth grade in a high school. The 1959-1960 elementary school change would mark the abolition of all racial restrictions in transfers among *elementary* schools in the county.

Desegregation of the county's high and junior high schools was scheduled to commence with a non-racial transfer policy in September, 1958. Thereafter Negroes' applications for transfer without regard to race would be permitted to the 8th grade in 1959; to the 9th grade in 1960; the 10th in 1961; 11th in 1962; the 12th in 1963. In 1963 and thereafter all Negro applicants to classes are scheduled to be admitted on the same basis upon which they would be admitted if they were white.

At the same time the following other Negro applicants might be permitted to transfer to high schools without regard to race: those able to meet special qualifications pertaining to probability of their individual success measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the principals of the schools from which the pupil is transferred and the school to which he desires to transfer, the director of instruction and the county supervisors working in the schools.

These criteria were to be applied only to Negro transfer applicants; white students might transfer without regard to these standards.

The Board took no steps to eliminate the situation in which, apart from any other school assignment standard, some schools are assigned solely to Negro children because of their race. Their approach to the constitutional requirement has been to maintain these schools while permitting those Negro children who come forward to transfer out if they come within the 1956-1963 plan.

The reasons advanced for deferring desegregation in this manner were three: (1) there was alleged fear of "bitter local opposition," 146 F. Supp. at p. 95, a recurrence of events such as had occurred in Delaware[2] (App. R. 30a) and perhaps riots (App. R. 37a). One application to a school was refused, for example, "[b]ecause it was a particularly sensitive spot." (App. R. 33a); and see (App. R. 35a); (2) there was alleged overcrowding on an "overall average" (App. R. 33a); (3) it was stated that high schools are subject-matter oriented unlike elementary schools which are pupil-oriented; that entering high school above the initial grade, during which associations and cliques form, imposes a burden of adjustment on the transferee which the faculty is not equipped to handle. 152 F. Supp. at p. 118.

A committee on facilities established by the school board had surveyed the county schools, and as to overcrowding had concluded that the overall capacity of Harford County schools is such that eight of them could receive more than 500 students in excess of the number they expected to

[2] Presumably referring to events in Milford, Delaware, which are sketched in Shoemaker (ed.), With All Deliberate Speed 40-41 (1957).

receive, and that "after carefully considering all factors at its disposal the committee is of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956 to 1957" (App. R. 44a). The record also shows that during an earlier period of time when the school board had authorized a plan which the court and plaintiffs construed as permitting transfer of any applicant to any grade without regard to race, about sixty Negro children made such application; most of these, however, were rejected upon the adoption of other, more restrictive, standards by the respondents which are assailed in this case (App. R. 26a).

There are approximately 12,600 white and 1,400 Negro students in the county (App. R. 26a).

Negro schools in the county were overcrowded in the words of the Superintendent "about like some of the others" (App. R. 34a). "[I]f a white child applied to any of the so-called overcrowded schools he would . . . have been admitted" (App. R. 34a; see also App. R. 29a). And, of course, he would have been admitted notwithstanding problems of "pupil consciousness" or "subject consciousness" whereby all but specially approved Negroes are barred.

It will be noted that the high school "stair-step" procedure, although formulated before the 1957 school year, did not contemplate the transfer of Negro children to the seventh grade without regard to race until the 1958 school year. The school board offered no justification for this other than, in the words of the Superintendent "I can't say why, your Honor, but the policy was moving forward three years, and that was all" (App. R. 36a).

As to whether there were administrative reasons for desegregating only the 7th grade in 1958 and not the 8th

grade also, the Superintendent stated "Well, I won't say none, but at the moment, I don't think of any big one; let's put it that way" (App. R. 37a).

Reasons for Granting the Writ

The decision below conflicts with constitutional principles established by this Court.

In the *School Segregation Cases* this Court prescribed the standards by which District Courts were to review school board decisions on how and when to desegregate.[1] The *School Cases* held that "[t]he *burden rests upon the defendants* to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date" 349 U. S. 294, 300. While, of course, various questions of school administration may be considered, such as "problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems," 349 U. S. at pp. 300, 301, the overriding consideration obviously is "the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis" 349 U. S. at p. 300.

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[1] These standards are unlike the typical rules for the review of administrative determinations which are provided by the Federal Trade Commission Act ("the findings of the Commission as to the facts, if supported by evidence, shall be conclusive") 15 U. S. C. A. Section 45(c) or the Administrative Procedure Act (". . . the reviewing court shall . . . hold unlawful and set aside agency action . . . unsupported by substantial evidence . . ."), 5 U. S. C. A. Section 1009(e)(B)(5).

The respondents herein failed to meet this burden. The Courts below failed to follow or apply the standards set out above. Of the problems enumerated by this Court only alleged overcrowding has been proferred by respondents as grounds for delay and the Record refutes this claim. One cannot read the Record in this case without concluding that respondents have endeavored, as assiduously as they can, to continue the segregated pattern of schools with as little change as possible for as long as they can.

1. We may exclude the alleged threats and intimidation against desegregation as grounds for delay. *Brown* v. *Board of Education*, 349 U. S. 294, 300; *Jackson* v. *Rawdon*, 235 F. 2d 93 (5th Cir., 1956) cert. denied 352 U. S. 925; *Buchanan* v. *Warley*, 245 U. S. 60. Moreover, the State of Maryland has made entirely clear that it will not at all tolerate such lawlessness, Southern School News, Nov., 1954 pp. 8-9; Dec., 1954 p. 7 (Baltimore disturbances stopped).[4]

2. No one denies that until 1963 Negro children will have to take tests not required of white children. No one denies that abolition of formerly all Negro schools—so constituted on a racial basis—is nowhere within the contemplation of respondents' plan. In this context then we may appropriately quote from *Lane* v. *Wilson*, 307 U. S. 268, 275, 276-277:

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[4] Intimations of illegal activity by this same trial court as grounds for refusing desegregation of Maryland parks because, allegedly, the "degree of racial feeling or prejudice in this State is probably higher with respect to bathing, swimming and dancing than with any other interpersonal relations except direct sexual relations," *Lonesome* v. *Maxwell*, 123 F. Supp. 193 (D. Md., 1954), rev. *sub nom. Dawson* v. *Maxwell*, 220 F. 2d 386 (4th Cir., 1955), aff'd 350 U. S. 877, have not been borne out by events. The Maryland State Commission of Forests and Parks has ordered that facilities under its jurisdiction "henceforward [shall be conducted] on an integrated basis." 1 Race Rel. L. Rep. 971 (1956).

> . . . The Amendment nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race.
>
> * * * * *
>
> . . . We believe that the opportunity thus given negro voters to free themselves from the effects of discrimination to which they should never have been subjected was too cabined and confined. The restrictions imposed must be judged with reference to those for whom they were designed. It must be remembered that we are dealing with a body of citizens lacking the habits and traditions of political independence and otherwise living in circumstances which do not encourage initiative and enterprise. To be sure, in exceptional cases a supplemental period was available. But the narrow basis of the supplemental registration, the very brief normal period of relief for the persons and purposes in question, the practical difficulties, of which the record in this case gives glimpses, inevitable in the administration of such strict registration provisions, leave no escape from the conclusion that the means chosen as substitutes for the invalidated "grandfather clause" were themselves invalid under the Fifteenth Amendment. They operated unfairly against the very class on whose behalf the protection of the Constitution was here successfully invoked.

The situation is like that of maintaining white and Negro waiting rooms, appropriately designated by signs which, however, may not be enforced by overt sanction which the Interstate Commerce Commission condemned in *N.A.A.C.P. v. St. Louis and San Francisco Ry. Co.*:

> Signs such as "white" and "colored", as displayed in the Broad Street Station, are commonly understood to represent rules established by managers of buildings in which they are posted in the expectation that they will be observed by persons having due regard for the proprieties. It is reasonable to believe that such was the original purpose of these signs, and that this is still true, despite the Terminal's acquiescence in disregard of the signs. 297 I. C. C. 335, 345 (1955).

3. As to overcrowding, Respondent's own Committee, which made an intensive study of the situation, concluded that the schools in question could accommodate such Negroes as might apply; in fact only 60 did apply at a time when the transfer standards purportedly allowed unlimited transfer, although under the amended restrictions adopted by Respondents only 15 of these were actually admitted. Negro schools too, were crowded.

Moreover, white children, transferring in from out of the district would have suffered no restriction because of the so-called crowding. At any rate, if there were a crowding problem a racial standard would be no way to treat it. *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir., 1956) cert. denied 350 U. S. 1006; *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir., 1957) cert. den. 353 U. S. 965.[5]

4. The postponement because of the so-called "subject-matter-mindedness" of high schools becomes patently frivo-

[5] See also *Gordon* v. *Collins*, 2 R. Rel. L. Rep. 304 (W. D. Ky., 1957) (court rejecting alleged reasons for delay which included overcrowding, transportation difficulties, reallocation problems, need for time to study the problems, unfavorable social conditions; the position of defendants is unreported); *Mitchell* v. *Pollock*, 2 R. Rel. L. Rep. 305 (W. D. Ky., 1957) (rejecting similar grounds for delay); and see, for the same considerations and holding *Garnett* v. *Oakley*, 2 R. Rel. L. Rep. 303 (W. D. Ky., 1957).

lous when considered along with the fact that the special certification requirement "may be applied only to Negro students not qualified for admission under paragraph 4," i.e., the stair-step arrangement (App. R. 3a); white children are not barred by this factor. If subject consciousness is a valid ground for barring Negro transferees above the first year (absent special certification) this would almost automatically convert all desegregation plans to at least 12 years: one can readily expect intransigent districts to call their schools "subject matter conscious" instead of "pupil conscious" thereby justifying differential racial treatment.

The postponement of desegregation of the 7th and 8th grades, as the Record indicates, was even without a proferred reason. When asked what administrative considerations entered into such a decision the superintendent replied that there were none of significance. Petitioner submits that the absence of even alleged reason for denying these fundamental rights exposes the baselessness of the other alleged justifications.

5. Although the trial judge recited that: "the burden of proof is on defendants to show that a delay during a transition period is necessary, that the reasons for the delay are reasons which the court can accept under the constitutional rule laid down by the Supreme Court, and that the proposed plan is equitable under all the circumstances," 152 F. Supp. at p. 118, its deference to the board's determination appears in its treatment of postponement of seventh grade desegregation:

> My only doubt is whether it is necessary to postpone until September, 1958, the complete desegregation of the seventh grade. But I am not charged with the responsibility of administering the Harford County public school system. Although I think the reasons given

> for the delay of one year are less satisfactory than the reasons given for the rest of the plan, a federal court should be slow to say that the line must be drawn here and cannot reasonably be drawn there, where the difference in time is short and individual rights are reasonably protected, during the transition period, as they are by the June 5, 1957 modification. 152 F. Supp. at p. 119.

It is therefore apparent that respondents herein did not meet the *burden* of establishing reasons for delay and that the court for the most part acquiesced to so-called administrative expertise. At best the Board produced some evidence which, on the whole record, it may be doubted, would have supported an ordinary administrative determination where the presumptions are all on the side of the agency. Cf. *Universal Camera Corp.* v. *N. L. R. B.*, 340 U. S. 474; *Folds* v. *F. T. C.*, 187 F. 2d 658 (7th Cir., 1951). But even more than this, we are concerned not only with an appraisal of the facts but a proper view of the law, cf. *O'Leary* v. *Brown-Pacific-Maxon*, 340 U. S. 504, involving as it does "the personal interest of the plaintiffs in admission to public schools as soon as practicable on a nondiscriminatory basis" 349 U. S. at p. 300. Insufficient regard was paid to the seriousness of this claim.

Constitutional rights were here subordinated to ineffable considerations of policy without substantial factual basis. The Court of Appeals in affirming and according the normal deference to district court findings pyramided presumption upon presumption.

As the plan now stands there are Negro children in the county, including plaintiffs, who will never see a desegregated education unless they are examined and become specially certified in a manner not required of white chil-

dren similarly situated. Given the history of the situation, and the continued maintenance of formerly colored schools as colored on solely a racial basis the deterrent effect of this special requirement is obvious; Cf. *Lane* v. *Wilson*, *supra*. At any rate the difference in treatment based on race is express and unconstitutional.

There is a conflict among the Circuits.

The Courts of Appeal of the Fourth, Sixth and Eighth Circuits have passed upon the constitutionality of desegregation plans. Moreover, a number of district courts in these circuits also have passed upon this question. While from the expectable disparity in factual situations and in trial records the cases are not clearly comparable, there is a substantial contrariety of views in application of the pertinent constitutional principles among the courts. These differences call for clarification by this Court of what it meant by "all deliberate speed" in *Brown* v. *Board of Education*, 349 U. S. 294, 301, the implementation decision.

In the instant case, in essence, the trial court's decision was epitomized by extreme deference to the School Board's plan, with little or no support in the record.[6] In the same vein and cited by the Court of Appeals herein is *Aaron* v. *Cooper*, 243 F. 2d 361 (C. A. 8th, 1957). This decision relied upon a complex of administrative considerations (ap-

[6] In the Fourth Circuit a series of West Virginia District Court cases involving plans, overcrowding, fiscal problems, and time for consideration, have been rejected as grounds for delay when it was clear that Negro children could be admitted notwithstanding the proffered reasons for deferment. *Shedd* v. *Board of Education of County of Logan*, 1 R. Rel. L. Rep. 521 (S. D. W. Va., 1956); *Dunn* v. *Board of Education of Greenbrier*, 1 R. Rel. L. Rep. 319 (S. D. W. Va., 1956); *Taylor* v. *Board of Education of County of Raleigh*, 1 R. Rel. L. Rep. 321 (S. D. W. Va., 1956); *Pierce* v. *Board of Education of Cabell County* (S. D. W. Va., 1956, unreported).

parently not contradicted in the record as in the *Harford County* case now before this court). It held that a seven-year stair-step desegregation plan did not deny fundamental Fourteenth Amendment rights.

On the other hand, an entirely different view has been taken by the Sixth Circuit in *Clemons* v. *Board of Education of Hillsboro*, 228 F. 2d 853 (6th Cir., 1956), cert. denied 350 U. S. 1006. The Court of Appeals held that where, as here, white children were not denied admission because of alleged overcrowding, desegregation could not be delayed for that reason. While the *Clemons* case involved, in addition to constitutional considerations, a question of validity under state law, it is to be noted that the court's opinion rests principally on the importance of the constitutional rights involved. Similarly, in *Booker* v. *Tennessee Board of Education*, 240 F. 2d 689 (6th Cir., 1957), cert. denied 353 U. S. 965, a five-year stair-step plan involving Tennessee's collegiate education was rejected. Alleged overcrowding was treated as a spatial problem, not a racial one. The board, it was held, might act to remedy the situation but could not treat it by a color standard. The *Booker* case, while not involving elementary or high school education, applied the standards of *Brown* v. *Board of Education*.[7]

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[7] Cf. the following district court cases in this (the Sixth) circuit: *Willis* v. *Walker*, 136 F. Supp. 177 (W. D. Ky., 1955) the court pointed out that "no white children either before or after the application for admission of the plaintiffs, were denied admission"; and that "good faith alone is not the test. There must be 'compliance at the earliest practicable date.'" 136 F. Supp. at p. 181. Desegregation was ordered by the next school year. See also *Gordon* v. *Collins*, 2 R. Rel. L. Rep. 304 (W. D. Ky., 1957); *Mitchell* v. *Pollock*, 2 R. Rel. L. Rep. 305 (W. D. Ky., 1957); *Garnett* v. *Oakley*, 2 R. Rel. L. Rep. 303 (W. D. Ky., 1957). (all summarily described *op. cit. supra*, n. 5)

CONCLUSION

The evil of racial segregation still permeates respondent's plan. Little effort has been made towards faithfully complying with this Court's holding that state created racial distinctions must be eliminated from public education. Every effort has been made to continue the overall pattern with as little desegregation as possible so that nonsegregation would be the exception rather than the rule.

Now, three years following this Court's implementation decision in *Brown* v. *Board of Education*, respondents submit that it is time to clarify whether such departure from prior segregation affords full equality which the United States Constitution secures.

WHEREFORE for the foregoing reasons it is prayed that this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Opinion of the Court of Appeals

PER CURIAM:

This is an appeal in a school segregation case involving the public schools of Harford County, Maryland. The school board of the county had adopted a plan for the gradual desegregation of elementary schools over a two year period and high schools over a period of five years. At the suggestion of the District Judge, the plan was amended to provide for the transfer of qualified students in high school grades pending the final elimination of segregation in those grades. As so amended the plan was approved by the judge and a decree was entered enforcing it and making special provision for the admission of two Negro children who had been parties to a prior action. The facts are fully set forth in the opinion of the District Judge, and we think that his discretion was properly exercised for reasons adequately stated in the opinion, to which nothing need be added. See *Moore* v. *Board of Education of Harford County*, 152 F. Supp. 114. See also *Allen et al.* v. *County School Board of Prince Edward County, Va.*, 4 Cir. 249 F. 2d 462, 465; *Rippy* v. *Borders*, 5 Cir. F. 2d ; *Aaron* v. *Cooper*, 8 Cir. 243 F. 2d 361.

Affirmed.

Judgment

This cause having come on for final hearing by the court without a jury on June 11, 1957 and the court having heard all the evidence adduced and being fully advised in the premises, it is hereby ordered, adjudged and decreed as follows:

1. Defendants now and hereafter shall accept applications for admission or transfer to all elementary classes under their control (except in the schools named in paragraph 2 as to which applications will be accepted as described in that paragraph), in accordance with rules and regulations set forth in paragraph 3 and every Negro child's application to classes governed by the instant paragraph shall be considered and granted on the basis upon which it would be considered and granted if he were white.

2. Defendants shall accept Negro children's applications for admission or transfer to Old Post Road, Bel Air and Highland elementary schools for the school year 1958-1959 and thereafter; and shall accept Negro children's applications for admission or transfer to Forest Hill, Jarrettsville and Dublin elementary schools and the sixth grade at Edgewood High School for the school years 1959-1960 and thereafter. Every Negro child's application to the schools named in this paragraph for the respective school years specified herein and thereafter shall be considered and granted on the basis upon which it would be considered and granted if he were white.

3. All applications for transfer to elementary classes shall be made during the month of May on a regular application form furnished by the Board of Education and must be approved by the applicant's classroom teacher and

the principal of the school he applicant attends. Such applications will be reviewed at the regular June meeting of the Board of Education. Applicants and their parents will be informed of the action taken on applications prior to the close of school in June of each year. In no event shall a Negro child's application for admission or transfer be rejected if it would have been granted had he been white.

4. A Negro child's application for admission or transfer to seventh grade classes commencing September, 1958, and thereafter, under defendant's control shall be considered and granted on the basis upon which it would be considered and granted if he were white. Such applications to the following classes shall be so treated during and after the year set forth alongside the class, as follows:

eighth grade	— 1959
ninth grade	— 1960
tenth grade	— 1961
eleventh grade	— 1962
twelfth grade	— 1963

In 1963 and thereafter all Negro applicants to all classes shall be admitted on the same basis upon which they would be admitted if they were white.

5. Commencing September, 1957 applications for admission or transfer by Negro children not qualified for admission or transfer under paragraph 4 to high schools under defendants' control will be considered and granted if the applicants fulfill special qualifications pertaining to the probability of success of each individual pupil. These qualifications will be measured by intelligence and achievement tests, grade level achievements and other similar matters to be adjudged by a committee consisting of the principals of the schools from which the pupil is transfer-

ring and the school to which he desires to transfer, the Director of Instruction and the county supervisors working in these schools. Apart from the fact that these conditions may be applied only to Negro students not qualified for admission under paragraph 4 no racial distinction is to be made in the administration of these tests and evaluations. Such applications may be made to the Board of Education between July 1 and July 15 of 1957 and years following in which these tests may be given.

6. Infant plaintiff Moore shall be admitted to the sixth grade at the Bel Air School. Infant plaintiff Spriggs shall be admitted to the eighth grade at Edgewood High School.

7. No racial distinctions whatsoever shall be made by defendants in treating Negro children who have been admitted to schools pursuant to this decree.

8. This Court retains jurisdiction for the purpose of granting any other relief that may become necessary.

District Court Opinion of November 23, 1956

THOMSEN, *Chief Judge*:

This action, brought by four Negro children seeking admission to certain public schools in Harford County, Maryland, present: (1) the usual questions under *Brown* v. *Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Id., 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; (2) the same questions of law which were raised by the defendants in *Robinson* v. *Board of Education*, D. C. D. Md., 143 F. Supp. 481; and (3) a problem of equitable estoppel arising out of a previous action brought by the plaintiffs herein and others against the defendants herein, which was dismissed by the plaintiffs in reliance upon a resolution adopted by the defendants, the Board of Education of Harford County.

FACTS

Harford County is predominately rural, but in the southern portion of the county there are two large government reservations, the Aberdeen Proving Ground at Aberdeen, and the Army Chemical Center at Edgewood. On these reservations there are non-segregated housing developments.

There are approximately 12,600 white students and 1,400 Negro students in the public schools of Harford County. The defendant Board of Education operates a 6-3-3 system; that is, 6 years of elementary school, 3 years of junior high and 3 years of senior high. The white high schools, at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen, and Havre de Grace, are combination junior-senior high schools; the colored schools, at Hickory and Havre de Grace, are "consolidated schools", comprising elementary, junior high and senior high classes.

On June 30, 1955, just one month after the second opinion in *Brown* v. *Board of Education*, the Board of Education of Harford County selected a Citizens Consultant Committee of thirty-six members from all sections of the county, five of whom were Negroes, to consider the problem of desegregation of the public schools in Harford County and to make recommendations to the Board of Education.

On July 27, 1955, a group of Negro parents petitioned the Board of Education, calling upon them "to take immediate steps to reorganize the public schools under your jurisdiction on a nondiscriminatory basis."

The Citizens Consultant Committee held its first meeting on August 15, 1955, and was split up into a number of sub-committees, to consider facilities, transportation and social relationships respectively. A member of the staff of the Board of Education served as consultant to each sub-committee. The sub-committees met at various times during the rest of the year 1955 and the first two months of 1956.

On November 29, 1955, the four infant plaintiffs in the instant case, together with seventeen other Negro children, through their parents and next friends, brought suit in this court against the defendants herein (Civil Action No. 8615), alleging that the Board had "refused to desegregate the schools within its jurisdiction and has not devised a plan for such desegregation," and praying that:

> "1. The court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and the application for permanent injunction according to law and that upon such hearings:
>
> "2. The Court enter preliminary and permanent judgments that any orders, customs, practices, and usages pursuant to which said plaintiffs are segre-

gated in their schooling because of race, violate the Fourteenth Amendment to the United States Constitution.

"3. The Court issue preliminary injunctions ordering the defendants to promptly present a plan of desegregation to this Court which will expeditiously desegregate the schools in Harford County and forever restrain and enjoin the defendants and each of them from thereafter requiring these plaintiffs and all other Negroes of public school age to attend or not to attend public schools in Harford County because of race.

"The Court allow plaintiffs their costs and such other relief as may appear to the Court to be just."

On February 27, 1956, the Citizens Consultant Committee held a meeting, at which all of the sub-committees presented their final reports, and the full committee unanimously adopted the following resolution:

"To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956."

On March 7, 1956, the Board of Education of Harford County adopted the resolution as submitted by the Citizens Consultant Committee.

On March 9, 1956, Civil Action No. 8615 came on for hearing before me on defendants' motion to dismiss the

complaint, pursuant to Rule 12(b), Fed. Rules Civ. Proc. 28 U. S. C. A. At the beginning of the hearing, counsel for defendants advised the court that the Board of Education of Harford County had "approved or adopted" the recommendation offered by the Citizens Consultant Committee and read the resolution into the record. He then said: "Since that plan embraces the relief prayed for, I think that takes care of that, and I want to call that to Your Honor's attention." Counsel for plaintiffs then said: "We are in a position to enter into a consent decree embodying the terms of this resolution. We would like to discuss it, but I do not think there is any need for further litigation." Counsel for the defendants replied: "I do not think that the Court should enter a consent decree when the relief prayed for is the policy adopted by the Board. I think the complaint should be dismissed in open court because there is really nothing before the Court to effectuate." I then left the bench so that counsel could discuss the matter more freely. When court reconvened the following colloquy took place:

> "Mr. Greenberg: We discussed this resolution that has been adopted by the School Board and we have told counsel for the defendants that we are sure they are proceeding in good faith and this plan is acceptable to us, and we will dismiss our suit and make that a matter of record in open court, and file this.
>
> "Mr. Barnes: That's agreeable to the defendants, your Honor.
>
> "The Court: I think it would be well to have the record show that in view of the fact that you have been presented with this you offered to dismiss the suit, and attach this paper as an exhibit.
>
> "Mr. Greenberg: Yes, sir.
>
> "The Court: I am very happy this has worked out in a very satisfactory way."

The following stipulation, signed by counsel for all parties, was filed in the case on the same day:

"Dismissal of Action

"1. This cause came to be heard in this Court on motion to dismiss the 9th day of March, 1956.

"2. Defendants, by their counsel, presented to the Court the attached Resolution of the Harford County Citizens Consultant Committee, adopted by the Harford County Board of Education, as submitted, at its regular meeting on March 7, 1956.

"3. Relying upon said resolution, as adopted, plaintiffs hereby withdraw their complaint, and pray that the same be dismissed, costs to be paid by plaintiffs."

To this stipulation was attached a certified copy of the resolution recommended by the Citizens Consultant Committee and adopted by the Harford County Board of Education.

On June 6, 1956, the Board of Education adopted the following "Transfer Policy", which all parties agree was reasonable:

"If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

"Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

"While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

"All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956."

The transfer policy was advertised in all newspapers published in Harford County. Sixty applications for transfer of Negro pupils were submitted within the time specified.

On August 1, 1956, the Board of Education of Harford County adopted a "Desegregation Policy", embodied in a document which recites the appointment of the Citizens Consultant Committee, the recommendation made by that Committee, the resolution adopted by the Board of Education on March 7, 1956, and the transfer policy adopted by the Board in June. The statement of Desegregation Policy continued as follows:

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied

local school problems. The resolution of the Harford County Citizens Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion

of this program depends upon the success of these initial steps."

Pursuant to the Desegregation Policy so adopted, fifteen of the sixty applications were granted, and forty-five, including those of the infant plaintiffs in the instant case, were refused. On August 7, 1956, the defendant Charles W. Willis, Superintendent of Schools, sent the following letter to the parents of each of the infant plaintiffs:

> "The Board of Education, at its regular August meeting, adopted a policy for the desegregation of Harford County schools. Under the provisions of this policy your child will not be allowed to transfer from his present school. Your request for a transfer has been refused by the Board of Education.
>
> "A copy of the desegregation policy is enclosed."

Neither the infant plaintiffs nor their parents appealed to the State Board of Education from the action of the County Superintendent denying their requests for transfer. Nor have any appeals been filed by or on behalf of any of the other Negro children whose requests for transfer were refused.

On August 28, 1956, the four infant plaintiffs by their parents and next friends filed the instant suit, pursuant to Rule 23(a)(3), "for themselves and on behalf of all other Negroes similarly situated", alleging most of the facts set out above and other facts, some of which are disputed, which need not be detailed at this time.

Infant plaintiff Moore seeks transfer from the Central Consolidated Elementary School in Hickory to the elementary school in Bel Air, where he resides; Spriggs seeks transfer from the school in Hickory to the High School (junior high) in Edgewood, where he resides; Slade and

Garland seek transfer from the Havre de Grace Consolidated School to the Aberdeen High School (9th and 11th grades respectively). They pray that:

> "1. The Court advance this cause on the docket and order a speedy hearing of the application for preliminary injunction and application for permanent injunction according to law and that upon such hearing;
>
> "2. The Court enter preliminary and permanent judgments, that any orders, customs, practices and usages pursuant to which said plaintiffs are each of them, their lessees, agents and successors in office from denying to plaintiffs and other Negro residents of Harford County of the State of Maryland admission to any Public School operated and maintained by the Board of Education of Harford County, on account of race and color." (sic)

Defendants filed a motion to dismiss the complaint pursuant to Rule 12(b), raising substantially the same points which were considered in *Robinson v. Board of Education of St. Mary's County, supra*. I overruled that motion on October 5, 1956. Defendants filed their answer on October 24, and the case was set for hearing on November 14. Both sides offered testimony and documentary evidence. From the testimony it appears that most, but not all, of the schools in Harford County are overcrowded if the "standards" or "goals" set out by the State are considered, namely, an average of 30 per class in elementary schools and 25 per class in secondary schools. But defendants conceded that any white children moving into the county would be admitted to the appropriate white school, however crowded. The factors considered by the Board of Education in adopting the August 1 Desegregation Policy were discussed at some length. The President of the Board of Education and

the County Superintendent testified that they did not consult counsel before adopting the August 1 Desegregation Policy, but that they thought this policy was in accord with the recommendation of the Citizens Consultant Committee and with the March 7 resolution adopted by the Board.

Plaintiff's counsel do not charge bad faith against either the Board or the Superintendent, but contend that:

"I. The Harford County School Board Resolution of March 7, 1956, meant that from the following school year and thereafter there would be no legally compelled racial segregation of school children in Harford County;

"II. The defendants are estopped from any further delay in complete integration by their action in causing plaintiffs to withdraw plaintiffs' original suit in reliance on the Board's resolution, which resolution was expressly incorporated by reference into the court's order of dismissal;

"III. Plaintiffs are entitled to judicial rather than administrative relief at this time in view of the history and facts of this case;

"A. Defendants, by their actions, are estopped from asserting the doctrine of administrative exhaustion as a defense;

"B. Even if defendants were not estopped from raising the defense of the doctrine of administrative exhaustion, the defense would nevertheless fail as the doctrine is not here applicable;

"IV. Even if defendants could validly raise the questions of necessary administrative delay, their own actions clearly demonstrate the fact that no additional time is needed to solve administrative problems;

"A. Defendants are administratively ready to effectuate desegregation;

"B. 'Community unreadiness' constitutes no legal justification for continued segregation."

Discussion

[1] The Maryland statutes and decisions were analyzed in *Robinson* v. *Board of Education of St. Mary's County*, *supra*, 143 F. Supp. at pages 487-491. I adhere to that analysis, and it need not be repeated here. It is clear that some of the factors considered by defendants in the instant case when they adopted the August 1 Desegregation Policy, and some of the points argued by counsel for plaintiffs in opposition thereto, involve administrative problems, over which the State Board of Education has jurisdiction, and which should be appealed to that Board under the Maryland authorities. Some of the other factors and points involve legal questions, which under Maryland law are for the courts. Most, if not all, involve both administrative and legal problems. Even the estoppel point is a mixed question, because the March 7 resolution leaves open at least the question of available facilities, whatever other matters may have been foreclosed.

Whether the court should attempt to segregate the legal questions and decide them at this time, or should defer any decision until the State Board has been given an opportunity to pass on the problem as an integrated whole, is a matter of comity and discretion. Since, at the time of the hearing in the *St. Mary's County* case, the State Board assured the court that it will give prompt attention to any appeal filed by or on behalf of Negro students, I am satisfied that I should not make a final decision in this case until the plaintiffs have appealed to the State Board from the action of the County Superintendent denying their applica-

tions for transfer. *Brown* v. *Board of Education*, 349 U. S. 294, 75 S. Ct. 753; *Hood* v. *Board of Trustees of Sumter County School District No. 2*, 4 Cir., 232 F. 2d 626; *Carson* v. *Board of Education of McDowell County*, 4 Cir., 227 F. 2d 789; *Robinson* v. *Board of Education of St. Mary's County*, D. C. D. Md., 143 F. Supp. 481. However, the final decision in this court, if one is necessary after the State Board has acted, should be rendered within such time that the losing parties may have an appeal heard by the Court of Appeals for the Fourth Circuit at its June, 1957 term.

Conclusions

[2] 1. The appointment of the Citizens Consultant Committee in the summer of 1955, its study, resulting in its recommendation to the Board of Education, and the resolution adopted by the Board on March 7, 1956, were a prompt and reasonable start toward compliance with the Supreme Court ruling.

2. I intimate no opinion at this time with respect to the sufficiency or propriety of the Desegregation Policy adopted by the Board on August 1, 1956.

3. I will enter a decree dismissing this action unless the plaintiffs appeal to the State Board of Education on or before December 15, 1956, from the action of the County Superintendent refusing their applications for transfer. If plaintiffs enter such an appeal, I will stay further proceedings in this case until the State Board shall have decided the appeal or shall have delayed decision for an unreasonable time; provided that after the State Board shall have rendered its decision, or after March 1, 1957, whichever is earlier, either plaintiffs or defendants may request the court to set this case for further argument and prompt decision.

District Court Opinion of June 20, 1957

THOMSEN, *Chief Judge*:

This action was brought by four Negro children, on their own behalf and on behalf of those similarly situated, seeking admission to certain public schools in Harford County, Maryland. The background and first stages of the case are detailed in an opinion filed herein on November 23, 1956, D. C., 146 F. Supp. 91.

Following that opinion, the four plaintiffs and eight other children, who have asked and been granted leave to intervene in this case, filed appeals with the State Board of Education from the refusal of the Superintendent of Schools of Harford County to grant their applications for transfer from consolidated schools for colored children to various white schools which were not desegregated in September, 1956.

While those appeals were pending before the State Board, on February 6, 1957, the Harford County Board adopted the following "Extension of the Desegregation Policy for 1957-1958":

> "Applications for transfers will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made

during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

"All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

After a hearing, the State Board dismissed the appeals, finding that "the Harford County Board acted within the policy established by the State Board", that "the County Superintendent acted in good faith within the authority set forth in the August 1, 1956, Desegregation Policy adopted by the County Board",[1] that the Desegration Policy was adopted in a bona fide effort to make a reasonable start toward actual desegregation of the Harford County public schools", and that "this initial effort [the desegregation of three grades in two elementary schools] has been carried out without any untoward incidents". The State Board also took "cognizance of the resolution of the County Board of February 6, 1957", set out above herein, "as well as the testimony to the effect that the proposed Harford County Junior College, which is to be established in Bel Air in the fall of 1957, will open on a desegregated basis, and also the testimony to the effect that the present program of new buildings and additions will make further desegregation possible".

After the decision of the State Board, plaintiffs set this case for further hearing, as provided in the earlier decree, 146 F. Supp. at page 98. That hearing was held on April 18, 1957. Charles W. Willis, the Harford County Super-

[1] See 146 F. Supp. at page 95.

intendent, explained and amplified the February 6, 1957 resolution of the County Board. The President of the Board and its counsel accepted that interpretation. So explained and amplified, the plan was substantially the same as the plan which was later adopted by the County Board on May 1, 1957, as follows:

> "The Board reviewed its desegregation policy of February 6, 1957. In accordance with this plan, the following elementary schools will be open in all six grades to Negro pupils at the beginning of the 1957-1958 school year:
>
> "Emmorton Elementary School
> "Edgewood Elementary School
> "Aberdeen Elementary School
> "Halls Cross Roads Elementary School
> "Perryman Elementary School
> "Churchville Elementary School
> "Youth's Benefit Elementary School
> "Slate Ridge Elementary School
> "Darlington Elementary School
> "Havre de Grace Elementary School
> "6th Grade at Aberdeen High School
>
> "Schools now under construction or contemplated for construction in 1958, if no unforeseen delays occur, will automatically open all elementary schools to Negro pupils by September, 1959. As a result of new construction, the elementary schools at Old Post Road, Bel Air, and Highland will accept applications for transfer of Negro pupils for the school year beginning in September, 1958. Forest Hill, Jarrettsville, Dublin and the sixth grade at the Edgewood High School would receive applications for the school year beginning in September, 1959.

"As a normal result of this plan, sixth grade graduates will be admitted to junior high schools for the first time in September, 1958 and will proceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963.

"The Board will continue to review this situation monthly and may consider earlier admittance of Negro pupils to the white high schools if such seems feasible. The Board reaffirmed its support of this plan as approved by the State Board of Education."

At the April, 1957 hearing, I ruled tentatively that the plan was generally satisfactory for the elementary grades, but not for the high school grades, and suggested that the parties attempt to agree on a modified plan. Conferences between counsel were held, but no agreement was reached. The County Board, however, on June 5, 1957 modified the plan as follows:

"The Board reaffirmed its basic plan for the desegregation of Harford County Schools, but agreed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

"Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application will be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

"These applications will be approved or disapproved on the basis of the probability of success and

adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

"The Board of Education and its professional staff will keep this problem under constant and continuous observation and study."

The modified plan was presented to the court at a hearing on June 11, 1957. It was made clear that when an elementary school has been desegregated, all Negro children living in the area served by that school will have the same right to attend the school that a white child living in the same place would have, and the same option to attend that school or the appropriate consolidated school that a white child will have. The same rule will apply to the high schools, all of which operated at both junior high and senior high levels, as they become desegregated, grade by grade. Of course, the County Board will have the right to make reasonable regulations for the administration of its schools, so long as the regulations do not discriminate against anyone because of his race; the special provisions of the June 5, 1957 resolution will apply only during the transition period.

[1] Willis also testified that the applications which will be made pursuant to the June 5, 1957 modification will be approved or disapproved on the basis of educational factors, for the best interests of the student, and not for other reasons. I have confidence in the integrity, ability and fairness of Superintendent Willis and of the principals,

supervisors and others who will make the decisions under his direction. In the light of that confidence, I must decide whether the modified plan meets the tests laid down in the opinions of the Supreme Court and of the Fourth Circuit,[2] with such guidance as may be derived from other decisions.[3] The burden of proof is on defendants to show that a delay during a transition period is necessary, that the reasons for the delay are reasons which the court can accept under the constitutional rule laid down by the Supreme Court, and that the proposed plan is equitable under all the circumstances. In considering whether defendants have met that burden, the court must recognize that each county has a different combination of administrative problems, traditions and character. Many counties are predominantly rural, others suburban; some have large industrial areas or military reservations. See 146 F. Supp. at page 92.

[2] Eleven out of the eighteen elementary schools in Harford County will be completely desegregated in September, 1957, three months from now. Three more will be completely desegregated in 1958, and the remaining four in 1959. The reason for the delay in desegregating the seven schools is that the county board and superintendent believe that the problems which accompany desegregation can best be solved in schools which are not overcrowded and where the teachers are not handicapped by having too many children in one class. That factor would not justify unreasonable delay; but in the circumstances of this case

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[2] Brown v. Board of Education, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083; Brown v. Board of Education, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; Carson v. Warlick, 4 Cir., 238 F. 2d 724; Carson v. Board of Education of McDowell County, 4 Cir., 227 F. 2d 789.

[3] Aaron v. Cooper, D. C. E. D. Ark., 143 F. Supp. 855; Kelley v. Board of Education of the City of Nashville, M. D. Tenn., 2 Race Rel. L. Rep. 21 (1957). Cf. Mitchell v. Pollock, W. D. Ky., 2 Race Rel. L. Rep. 305 (1957).

it justifies the one or two years delay in desegregating the seven schools.

With respect to the high schools, other factors are involved. Superintendent Willis testified that when a child transfers to a high school from another high school he faces certain problems which do not arise when he enters the seventh grade, which is the lowest grade in the Harford County high schools. After a year or so in the high schools social groups, athletic groups and subject-interest groups have begun to crystallize, friendships and attachments have been made, cliques have begun to develop. A child transferring to the school from another high school does not have the support of a group with whom he has passed through elementary school. A Negro child transferring to an upper grade at this time would not have the benefit of older brothers, sisters or cousins already in the school, or parents, relatives or friends who have been active in the P. T. A. High school teachers generally, with notable exceptions, are less "pupil conscious" and more "subject conscious" than teachers trained for elementary grades, and because each teacher has the class for only one or two subjects, are less likely to help in the readjustment. The Harford County Board had sound reasons for making the transition on a year to year basis, so that most Negro children will have a normal high school experience, entering in the seventh grade and continuing through the same school. But I was unwilling in April to approve a plan which would prevent all Negro children now in the sixth grade or above from ever attending a desegregated high school.

However, the modified plan adopted on June 5, 1957, permits any Negro child to apply next month for transfer to a presently white high school, and if his application is granted, to be admitted in September, 1957, three months hence. This plan is different from any to which my atten-

tion has been called or about which I have read. It is an equitable way of handling the transition period. My only doubt is whether it is necessary to postpone until September, 1958, the complete desegregation of the seventh grade. But I am not charged with the responsibility of administering the Harford County public school system. Although I think the reasons given for the delay of one year are less satisfactory than the reasons given for the rest of the plan, a federal court should be slow to say that the line must be drawn here and cannot reasonably be drawn there, where the difference in time is short and individual rights are reasonably protected, during the transition period, as they are by the June 5, 1957 modification.

[3] Plaintiffs are obviously worried whether the June 5 plan will be carried out in good faith, or whether it will be used as a means of postponing the admission of Negro children into the high schools without proper justification. Although, as I have said, I have confidence in Superintendent Willis and his staff, plaintiffs' doubts are not unreasonable in view of the past history of this litigation. I will, therefore, enter a decree which will spell out the rights of individual children under the plan, and will retain jurisdiction of the case, so that if any child or his parents feel that his application has been rejected for a reason not authorized by the modified plan, a prompt hearing may be granted.

There remains the question of estoppel, based upon the resolution adopted by the County Board on March 7, 1956, and the interpretation of that resolution by its counsel in open court in the earlier Harford County case, as a result of which the plaintiffs therein dismissed their action. The facts on this point are set out fully in 146 F. Supp. 93 et seq.

[4] The March 7, 1956 resolution was somewhat ambiguous, but, as it was interpreted by defendants' counsel in open court, plaintiffs were justified in believing, as I did, that applications for transfer would be considered without regard to the race of the applicant. The County Board interpreted it differently in the statement entitled "Desegregation Policy" adopted on August 1, 1956; see 146 F. Supp. at page 95. I cannot accept the interpretation adopted by the County Board, but I find that it was adopted as a result of a mistake and not as the result of any bad faith on the part of the Board, the Superintendent, or their counsel. The Board adopted the Desegregation Policy of August, 1956, in the honest belief that it was to the best interests of all of the children in the County. Pursuant to that policy the Superintendent admitted fifteen Negro children to two previously white schools, but denied admission to forty-five others, including the infant plaintiffs herein.

There is grave doubt whether a governmental agency such as a county school board can be estopped from adopting a policy, otherwise legal, which it believes to be in the best interests of all the people in the County. In the instant case it would be inequitable and improper, on the ground of estoppel, to require the County Board to open all schools to Negroes immediately, as requested in the complaint. The County Board should not be foreclosed by the facts which I have found from taking such actions, and adopting and modifying such policies, as it believes to be in the best interest of the people in the County, so long as those actions and those policies are constitutional.

[5] The individual plaintiffs in the earlier case, however, were prevented from pressing their individual rights in this court and on appeal by the adoption of the March 7, 1956 resolution and by what took place in this court

in that case. See 146 F. Supp. 93 et seq. Two of those infant plaintiffs are before the court in this case, and their counsel urge that their individual rights, as well as any class rights, be enforced. The reasons which prevent an estoppel against the County Board so far as its general policies are concerned, do not apply with equal force to the individual claims of those two children. It would not be equitable to delay any further the enforcement of their individual rights.

I will, therefore, include in the decree a provision enjoining the County Board from refusing to admit Stephen Moore and Dennis Spriggs to whatever school would be appropriate for them if they were white.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 999

ROSALIND SLADE, ET AL.,
Petitioners,

v.

BOARD OF EDUCATION OF HARFORD COUNTY, ET AL.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

This Brief is submitted on behalf of the Board of Education of Harford County, Maryland, David G. Harry, President, Howard S. O'Neill, G. Robert Pennington, Samuel W. Galbreath, Mrs. Robert (Blanche S.) Fletcher and Charles W. Willis, Superintendent of the Schools of Harford County, Respondents, in opposition to the Petition of Roslyn Slade, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, and Maurice L. Horsey, III, for a Writ of Certiorari to review the Judgment of the United States Court of Appeals for the Fourth Circuit affirming the Judgment of July 3, 1957 of the United States District Court for the District of Maryland (Thomsen, C.J.) setting forth a Plan of Desegregation for the Public Schools of Harford County.

OPINIONS BELOW

There were two Opinions of the District Court in this case, reported as "*Moore, et al. v. Board of Education of Harford County, et al.*" The First Opinion was dated November 23, 1956 and is reported at 146 F. Supp. 91; the Second Opinion was dated June 20, 1957 and is reported at 152 F. Supp. 114. The Opinion of the Court of Appeals for the Fourth Circuit was dated February 12, 1958 and is reported at 252 F. 2d 291.

QUESTION INVOLVED

Were the findings by the District Court (Thomsen, C. J.) that the Board of Education of Harford County, Maryland had made a prompt and reasonable start toward the desegregation of the Public Schools of Harford County and that additional time was necessary to effectuate such desegregation as set forth in the District Court's Judgment of July 3, 1957 clearly erroneous?

The Respondents maintain that the District Court's findings were not clearly erroneous; on the contrary they were clearly in accord with the great weight of evidence. These findings were affirmed by the Court of Appeals for the Fourth Circuit in its Per Curiam Opinion (App. 17)[1] and in effect the Opinion of the District Court was adopted as the Opinion of the Appellate Court.

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[1] "App." refers to the Appendix to the Petition for Certiorari; "App. R." refers to the Petitioners' Appendix Record in the Court of Appeals for the Fourth Circuit; and "Resp. App. R." refers to the Respondents' Appendix Record used in the Court of Appeals and filed as part of the Record in this matter.

STATEMENT IN ADDITION TO THE STATEMENT OF THE PETITIONERS

The Statement of the Petitioners omits reference to many of the facts appearing in the Record. Indeed, in the Petition there is no reference whatever to any of the evidence appearing in the 69 pages of the Respondents' Appendix in the Court of Appeals. It is, therefore, necessary to supplement the Statement of the Petitioners.

The State of Maryland from 1865, when its state-wide educational system was established, until 1955 — a period of 90 years — had separated the white and colored students in its schools. The system of "separate but equal" school facilities was instituted in 1872 and continued until 1955, a period of 83 years.

Very shortly after the Second Opinion in the *Brown* case, *Brown v. Board of Education of Topeka*, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (Warren, C. J.), was filed on May 31, 1955, the State Superintendent of Schools (Dr. Thomas G. Pullen, Jr.) requested an Opinion of the Attorney General of Maryland in regard to the effect of the *Brown* decision upon the provisions of the State Law requiring separation of the races in the public schools of Maryland.

On June 20, 1955, just twenty days after the filing of the Second Opinion in the *Brown* case, the Attorney General of Maryland rendered a formal Opinion (published in the Daily Record of June 29, 1955) in which he stated that "* * * *all constitutional and legislative acts of Maryland requiring segregation in the public schools of the State of Maryland are unconstitutional and must be treated as nullities.*" (Emphasis supplied.)

The Attorney General also stated that even though the State of Maryland were not a formal party to the *Brown*

and companion litigation, "*We do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make 'a prompt and reasonable start' toward the ultimate elimination of racial discrimination in public education.*" Report and Official Opinions of the Attorney General, (of Maryland Vol. 40, page 175.

The State Board did not defy or seek to evade this opinion of the Attorney General of Maryland.

On the contrary, *two days later*, on June 22, 1955, the State Board passed a Resolution, in which, after various recitals, it stated:

> "Now that the Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education *calls upon* the local public school officials *to commence this transition at the earliest practicable date, with the view of implementing the law of the land.*" (Emphasis supplied.)

In the same resolution the Staff of the State Board was directed to cooperate with the local public school officials "to give effect * * * in the process of the transition from segregation to desegregation" and stated that it "trusts that all citizens will exercise patience and tolerance *to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.*" (Emphasis supplied.)[2]

---

[2] Judicial notice may be taken of the fact that there have been three meetings of the General Assembly of Maryland since the Opinion of the Attorney General was promulgated, the "Short" Session of 1956, the "Regular" Session of 1957 and the "Short" Session of 1958 and that there were no Acts passed which attempted in any way to over-

Eight days after the Opinion of the Attorney General of Maryland of June 20, 1955 and thirty days after the filing of the Second Opinion of the Supreme Court of the United States in the *Brown* case, the Board of Education of Harford County (hereinafter referred to as the "County Board") on *June 30, 1955* selected a Citizens Consultant Committee of 36 members from all sections of Harford County, 5 of whom were colored citizens, to consider the problem of desegregation of the Harford County public schools and to make recommendations to the County Board.

The Citizens Consultant Committee held its first meeting on August 15, 1955, divided into Sub-Committees to consider (1) facilities, (2) transportation and (3) social relationship. A member of the Staff of the County Board served as a consultant to each sub-committee. These Sub-Committees met at various times during the remaining portion of 1955 and during January and February, 1956.

On February 27, 1956, the Citizens Consultant Committee held a meeting at which all of the Sub-Committees presented their final reports. None of the specific recommendations in those reports was adopted by the full Committee which *unanimously* adopted the following resolution.

> "To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be *granted* by the Board of Education in accordance with *such rules* and *regulations as it may adopt and in accordance with the available facilities in such schools;* effective for the school year beginning September, 1956." (Emphasis supplied.)

---

rule or circumvent the Opinion of the Attorney General that any Maryland Constitutional or Statutory provisions requiring segregation in the public schools were nullities.

The Resolution of the Citizens Consultant Committee was adopted by the County Board on March 7, 1956.

On June 6, 1956 the County Board adopted a "Transfer Policy", (App. R. 8a-9a), which was duly advertised in the local newspapers. This "Transfer Policy" provided that if a child desired to attend a school other than the one in which he was enrolled or registered, his parents must request a transfer between June 13 and July 15, 1956, stating the reason for the transfer and bearing the approval of the principal of the school the applicant was then attending. It provided that:

> "While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason."

The County Board stated in the "Transfer Policy" that it would finally consider the application for transfer at its meeting of August 1, 1956. Children whose applications were approved, were required to enroll on the regular summer registration date, August 24, 1956. Sixty colored students filed applications for transfer.

On August 1, 1956, the County Board adopted a "Desegregation Policy". This is set out in full in Chief Judge Thomsen's Opinion of November 23, 1956 (App. 26-28). The County Board in accordance with its "Desegregation Policy" granted 15 of the 60 applications for transfer and denied 45 applications. No appeal was taken by the 45 applicants to the Maryland State Board of Education.

The District Court held that the action of the County Board was a prompt and reasonable start toward compli-

ance with the Second Opinion in the *Brown* case and that an appeal must be taken to the Maryland State Board of Education from the action of the County Superintendent in denying the 45 applications before the District Court would consider the question further.

Appeals were perfected to the State Board, and a hearing was held on February 27, 1957, at which all parties were represented by counsel (Resp. App. R. 59).

The President of the State Board is Wendell D. Allen, a prominent Baltimore Attorney. William A. Gunter, a distinguished Attorney from Western Maryland is a member of the State Board, as is also Dr. Dwight O. W. Holmes, an eminent colored educator, and President Emeritus of Morgan College (Resp. App. R. 59). All of the members of the State Board participated actively in the hearing.

At this hearing, the County Superintendent, Mr. Willis, outlined the considerations which the County Board considered in formulating its Desegregation Policy of August 1, 1956. These were in brief: (1) the likelihood of successful application of the desegregation policy in Edgewood and Aberdeen, where there were Army bases, and a "desegregated" atmosphere; (2) the wisdom of beginning the desegregation program with the younger children in the lower grades (a) where social problems were not so great and (b) both white and colored pupils would have the same educational program and background and could progress together with grade to grade; and (c) the available school facilities. In regard to this latter consideration, Mr. Willis pointed out that there had been a 100% increase in the Harford County school population in the past 10 years (from approximately 7,000 to 14,000) during which period the County Board has spent approximately $14,000,000 for school construction. The County Board

has a $3,000,000 building program projected, one-half for 1957 and the other half for 1958. The only elementary schools which had available facilities for the desegregation program on August 1, 1956, were Edgewood and Aberdeen, and Perryman, where there were no applications, and Darlington, in a very rural area, where there was only one application (Resp. App. R. 63-66).

The County Board's "Extension of the Desegregation Policy for 1957-1958", adopted February 6, 1957, was brought to the State Board's attention. This Resolution, in effect, extended desegregation to all of the elementary schools and all classes in those schools for the school year 1957-1958 which were not more than 10% overcrowded as of February 1, 1957. Mr. Willis explained that schools which are 10% overcrowded as of February 1, 1957, would be from 16% to 20% overcrowded in the fall of 1957, the beginning of the 1957-1958 school year. The normal class size was based on an average of 30 pupils for each classroom. This is in accordance with the State and National Standard (App. R. 33a). The building program would eliminate all of the overcrowding in the elementary schools by September, 1958, if there were no unforseen developments in the building program (Resp. App. R. 68). Mr. Willis pointed out that the new Junior College at Bel Air would be opened in September, 1957, on a desegregated basis (Resp. App. R. 68).

Mr. Willis stated that the County Board had moved forward in the desegregation of the public schools of Harford County "on a reasonable basis" and "with all practicable and deliberate speed" (Resp. App. R. 68).

This testimony was confirmed by Mr. Harry, the President of the County Board (Resp App. R. 69).

On March 4, 1957, the State Board by a *unanimous decision* dismissed the appeals, finding that (1) the County Board had acted within the policy established by the State Board, (2) the County Superintendent had acted in good faith within the authority set forth in the Desegregation Policy adopted on August 1, 1956, by the County Board; (3) that the Desegregation Policy of August 1, 1956, was adopted in a bona fide attempt to make a reasonable start toward desegregation of the Harford County public schools; (4) that the initial efforts had been carried out without any untoward incidents (Resp. App. R. 70-76).

On February 6, 1957, the County Board had passed a Resolution for "Extension of the Desegregation Policy for 1957-1958". In effect, it extended desegregation to *all* grades of *all* the elementary public schools in Harford County where space was available. It further provided:

> "Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarretsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.
>
> "All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

The District Judge indicated that the plan of the County Board was generally acceptable for elementary schools, but that he was doubtful about postponing desegregation completely in the High Schools until normally accomplished by the Plan's operation in the elementary schools with promotions to the High Schools in regular course. Judge Thomsen suggested that the parties try to agree on some plan for the High Schools during the transition period. This was attempted but Counsel for the Petitioners would not agree on any limitation of any number of colored pupils in the High Schools but insisted that "the Plaintiffs and the class they represent should be admitted to the High schools without any racial restrictions whatsoever" (Resp. App. R. 78).

The County Board modified its Desegregation Plan for the High Schools of Harford County during the interim period by providing for applications for transfers to High Schools near the applicant's home to be approved or disapproved on the "basis of probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (Resp. App. R. 78).

The final plan as modified was incorporated in the Decree of July 3, 1957 (prepared by Counsel for the Petitioners) with provision for the immediate admission of two of the infant plaintiffs (App. 18-20). The District Court retained

jurisdiction for any other relief which might become necessary.

The good faith of the Respondents was not challenged by the Petitioners (App. 30).

NO GROUNDS EXIST FOR THE GRANTING OF THE WRIT

I.

The Decision Below Does Not Conflict With the Decisions of This Court.

It is clear in the Opinions of the District Court and in the Opinion of the Court of Appeals that the applicable law which was followed and applied was that announced by this Court in the Opinions in the *Brown* case. The Opinions in the lower courts apply all of the language of *Brown* Opinions and not merely those portions selected by the Petitioners. All of the language in the Second Opinion is important. Chief Justice Warren stated for this Court:

> "Full implementation of these constitutional principles *may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems;* courts will have to consider whether the action of school authorities *constitutes good faith implementation of the governing constitutional principles.* Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts." (Emphasis supplied.) 349 U. S. at page 299.

> "In fashioning and effectuating the decrees, the courts will be guided by *equitable principles.* Traditionally, equity has been characterized by a *practical flexibility in shaping its remedies and by a facility for*

adjusting and reconciling public and private needs. These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools *as soon as practicable on a nondiscriminatory basis.* To effectuate this interest may call for *elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.* Courts of equity *may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner.* But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." (Emphasis supplied). 349 U. S. at page 300.

"While giving weight to these public and private considerations, the courts will require that the defendants make *a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. The burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practical date.* To that end, the courts *may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts* and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the *adequacy of any plans* the *defendants may propose* to meet these problems and to *effectuate a transition* to a racially *nondiscriminatory* school system. During this period of transition, the courts will retain jurisdiction of these cases." (Emphasis supplied.) 349 U. S. at page 300.

The questions involved in this case are *questions of fact* decided by the District Court after several hearings and affirmed by the Court of Appeals.

A. THE EVIDENCE SUPPORTS THE FINDING THAT "A PROMPT AND REASONABLE START" TOWARD THE DESEGREGATION OF THE PUBLIC SCHOOLS OF HARFORD COUNTY WAS MADE BY THE BOARD.

The evidence shows that the Attorney General of Maryland and the State Board moved with *haste* (rather than "deliberate speed") to announce the change in the long established Maryland policy in regard to separation of the races in the public schools. The County Board moved with great expedition to select the Citizens Consultant Committee, that is, on June 30, 1955, just 1 month after the filing of the Second Opinion in the *Brown* case. Although the colored students only amount to approximately 10% of the entire school population, 5 of the 36 members of the Citizens Consultant Committee, approximately 14% of the entire membership, were representative Negroes holding important positions or having a professional status. This Committee met promptly on August 15, 1955 and subdivided into Sub-Committees which studied the problems involved. The Sub-Committees presented their final reports at a meeting of the full Committee on February 27, 1956; none of the recommendations in the reports of the Sub-Committees was adopted, but the Resolution of February 27, 1956 was *unanimously* adopted by the *full* Committee, in effect leaving the granting of applications to the judgment and discretion of the County Board. The County Board, 8 days later, adopted the same Resolution.

The District Court held that these actions constituted a "prompt and reasonable start" toward compliance with this Court's Ruling (App. 32). They were most certainly

"prompt". They were entirely "reasonable". There is no evidence to the contrary.

B. THE EVIDENCE SUPPORTS THE FINDING THAT ADDITIONAL TIME WAS NECESSARY TO EFFECTUATE THE DESEGREGATION OF THE PUBLIC SCHOOLS OF HARFORD COUNTY AS SET FORTH IN THE JUDGMENT OF JULY 3, 1957.

The evidence shows that Harford County is predominantly a rural County. There are two large government reservations in the southern end of the County — Aberdeen Proving Ground at Aberdeen and the Army Chemical Center at Edgewood. On the government reservations, the housing developments are operated on a non-segregated basis.

In accordance with the Maryland law and policy prior to 1955, the Harford County public school system provided "separate but equal" school facilities for white and colored students. At the time of this suit, the County Board provided two large "consolidated" schools for approximately 1400 colored students, comprising elementary, junior high and senior high school classes at Hickory and at Havre de Grace. This was in accordance with the County Board's 6-3-3 system, that is, 6 years of elementary school, 3 years of junior high school and 3 years of senior high school. The same system was provided for approximately 12,600 white students. There were 18 white elementary schools[3] and 5 high schools, comprising junior and senior high schools at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen and Havre de Grace,

[3] Emmorton, Edgewood, Aberdeen, Halls Cross Roads, Perryman Churchville, Youth's Benefit, State Ridge, Darlington, Havre de Grace, Old Post Road, Bel Air, Highland, Forest Hill, Jarrettsville, Dublin, 6th grade at Aberdeen High School and sixth grade at Edgewood High School.

It is conceded that the school facilities for the colored students were equal if not superior to the facilities for the white students.

The students, both white and colored, were transported free of charge to their schools unless they lived within walking distance of the respective schools. White students were required to attend the nearest white school and colored students the nearest colored school.

There were white teachers in the white schools and colored teachers in the colored schools.

During the past 10 years, the school population has increased 100% (from approximately 7,000 to 14,000) and the County Board has spent during that period approximately $14,000,000.00 for school construction. To relieve overcrowding and care for additional students, the County Board has a $3,000,000.00 building program, one half for 1957 and the other half for 1958.

Well before the beginning of the school year for 1956 (September 1956), the County Board on June 6, 1956 adopted its Transfer Policy, advising of the right to file applications for transfer to other schools, but specifically indicating that it reserved the right "during the period of transition to delay or deny the admission of a pupil to any school if it deems such action wise and necessary for any good and sufficient reason."

The County Board adopted its "Desegregation Policy" on August 1, 1956, outlined its proposals for the desegregation of the schools in Harford County and its reasons for the Plan. The County Board pointed out that this Court's decision "provided for an orderly, gradual transition based on the solution of varied local school problems and that the Resolution of the Citizens Consultant Committee was in accord with that principle and left to the

discretion of the County Board the "establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards and social relationships". The County Board recited that studies in areas where complete desegregation had been practiced indicated a lowering of school standards that was detrimental to all children and that experience in other areas showed that bitter local opposition to desegregation in a school system "not only prevents an orderly transition, but also adversely affects the whole educational program." The County Board also pointed out that its first concern must always be that of providing the best possible school system for *all* of the children of Harford County." (Emphasis supplied.) The County Board concluded that it would be best to start the desegregation policy with younger children where social problems posed by desegregation could be solved with the least emotionalism. It selected the first three grades in Edgewood Elementary School and Halls Cross Roads Elementary School for the approval of applications of Negro pupils from colored to white schools, pointing out that there were already integrated housing developments in these areas and that, with the exception of 2 small schools, (in one of which there was one application, in the other, none) these were the only elementary buildings in which space was available at the present time. The County Board further stated that the future rate of expansion of the program depended upon the success of the initial steps.

The County Board, in accordance with the policy, approved 15 of the 60 applications for transfer received, or 25%, and rejected 45 applications.

The program was successful and on February 6, 1957 (again well in advance of the 1957-1958 school year be-

ginning September 1957), the County Board substantially extended its desegregation policy by adopting a Resolution entitled "Extension of Desegregation Policy for 1957-58" (App. 33-34). This, in effect, provided for the acceptance of *elementary schools* in *all classes* in the area in which they lived, if space were available. Space would be considered available in schools not 10% overcrowded, as of February 1, 1957. All capacities were based on the State and National standards of 30 pupils per classroom (App. 33).

Mr. Willis, the County Superintendent, pointed out that in the opinion of the County Board the adjustment of pupils transferring from a colored to a white school could be accomplished more smoothly and with better results for the education of the pupil involved if the transfer were made to a school which was not substantially overcrowded. Mr. Willis further pointed out that a school which was 10% overcrowded as of February 1, 1957 would be more overcrowded in September, 1957. In his judgment, the figures would be 5% to 10% higher in September, 1957 (Resp. App. R. 37).

Mr. Willis summarized the factual situation in regard to the 7 schools which were overcrowded more than 10% as of February 1, 1957 (Resp. App. R. 35-37), as follows:

Name of Elementary School	*Percentage of Overcrowding as of February 1, 1957*
Sixth grade at Edgewood	12%
Old Post Road	24%
Forest Hill	17%
Bel Air	14%
Jarrettsville	10%
Highland	16%
Dublin	14%

The overcrowding in three of these Schools, Old Post Road, Bel Air and Highland, will be eliminated by September, 1958 and the overcrowding in the remaining four Schools, Forest Hill, Jarrettsville, Dublin, and Sixth grade at Edgewood High School, will be eliminated by September 1959 by the Building Program if there are no unforseen circumstances arising in that Program. Summarizing the situation in the elementary schools by percentages, 61% of the elementary schools were desegregated in full as of September, 1957; 17% more will be fully desegregated as of September, 1958; and, the remaining 22% will be fully desegregated as of September, 1939. Judge Thomsen held that the reasons given for this policy in regard to overcrowding were reasonable and that although this factor would not justify unreasonable delay, under the circumstances of this case, it justified the one or two years delay in desegregating the 7 schools mentioned (App. 38).

The District Court had indicated that although it was tentatively of the opinion that the desegregation for the elementary schools was reasonable and that the County Board had met the burden of proof in requiring the one of two years delay in desegregating the seven elementary schools mentioned, it was tentatively of the opinion that there could be some acceleration in the desegregation program so far as the high schools were concerned. The Court suggested that Counsel for the respective parties attempt to agree upon some reasonable plan for the interim period.[4]

[4] It should be kept in mind that the Harford County plan for desegregation would have worked automatically after the elementary schools were desegregated, as a colored student at one of the former white elementary schools would automatically proceed into the same junior high school as a white student in the same class. The entire high school system would thus be desegregated automatically by 1963 at the latest date, assuming that the County Board did nothing further in regard to its desegregation policy.

The Petitioners made much of the fact that in June, 1955 there were only 60 applications for transfer and seek to use this figure as the number of applications which would inevitably be filed. It is significant, however, to note that although requested by the District Court to seek to reach an agreement on the question of admissions during the interim period, Counsel for the Appellants *refused to make any agreement as to the number of applications during the interim period* (Resp. App. R. 78). In other words, the Petitioners insisted that the matter be left entirely open to *any number* of colored pupils who might apply during the interim period. Obviously, the County Board could not undertake this type of program, as it might well have resulted in the complete disruption of the entire school system if there were a substantial number of applications for transfer from the colored high schools to the white high schools during the interim period. There would obviously be disruption of the transportation system, the classrooms, the teaching staff, both in the white and colored high schools, as it must be remembered that the colored teachers and principals in the colored high schools must also be considered in the entire problem. Even more importantly, a transfer from a colored elementary school to a white high school would cause the colored child to face problems which do not arise if that child had normally proceeded from the elementary school to the junior high school in regular course. As pointed out by Mr. Willis and also in Judge Thomsen's Opinion of June 20, 1957 (App. 39), after a year or so in the high school, social groups, athletic groups and subject interest groups had begun to crystalize, friendships and attachments have been made. A child transferring to the school from another high school does not have the support of the group with which he has passed through the elementary school. A colored pupil trans-

ferring to an upper grade during the interim period would not have the benefit of his older brothers, sisters or cousins already in the school, or of his parents, relatives or friends who have been active in the Parent-Teacher Association. Mr. Willis also pointed out and the District Court found as a fact that high school teachers generally, with notable exceptions, are less pupil conscious and more subject conscious and are less likely than the teachers trained for elementary grades, to be helpful in readjustment. Judge Thomsen pointed out that the County Board had sound reasons for making the transition on a year to year basis so that most colored children would have a normal high school experience, entering in the seventh grade and continuing through the same school.

To meet the problem posed by the interim period, so far as the high schools were concerned, the County Board, notwithstanding the inability to reach an agreement with Counsel for the Petitioners in regard to the matter, modified its Desegregation Policy on June 5, 1957 which would permit *any student* wishing to transfer to a high school nearer his home, to apply between July 1 and July 15, 1957 for transfer for the year beginning September, 1957. Such an application would be evaluated on an individual basis by a Committee consisting of the high school principals of the two schools involved, the Director of Instruction and the County Supervisors working in those schools. The guides and standards set for the Committee were:

> "These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be

limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (App. 36-37).

The County Board again stated that it "and its professional staff would keep this problem under constant and continuous observation and study".

It should be noted that (1) the requirements for transfer during the interim period apply to *both white and colored students*,[3] and (2) the tests in the usual situation are the standardized intelligence and achievement tests which are given in regular course to *both white and colored students*. The Petitioners are in error in their statement that the requirements and tests apply *only* to colored students.

Judge Thomsen found that these guides and standards were reasonable and further that he had confidence in the integrity, ability and fairness of the County Superintendent, Mr. Willis, and of the principals, supervisors and others who would make the decisions under his direction. In any event, the District Court retained jurisdiction so that if any applicant or his parents thought that the plan during the interim period was not being equitably or properly applied, a prompt hearing in the District Court could be obtained.

The Petitioners suggest that it is quite improper for a County Board and a County Superintendent to give any consideration whatever to the possibility of strenuous or violent local opposition to a desegregation plan. This Court has not stated this to be the law, but on the contrary, has

[3] Subsequent to the passage of the Decree of July 3 1957, there have been three applications for transfers filed by *white* students, two of which applications have been granted and one refused. There have been no applications filed by any colored students up to the present time.

provided for a *gradual* rather than an immediate change-over from a segregated to a desegregated school system. Obviously opposition of a local community to such a transfer in its entirety cannot be permitted to "devitalize" the constitutional principles involved. This Court, however, clearly points out that the *public interest* which, of necessity, must include the maintenance of *public order* and *public tranquility* especially in the operation of the *public school system*, must be considered by the District Court as well as by the local school officials. This does not mean that there may be unreasonable delay, but it does mean that during an interim period of change from a segregated to a desegregated system, the application and the timing of the desegregation process may, in the good judgment of the County Board, be deferred or accelerated on a reasonable basis depending on the chances of success of the program. As the County Board has stated several times, its duty is to provide the best public school system it can for all the students of Harford County regardless of their color, and at the same time its duty is to implement within a reasonable time and with deliberate speed the decision of this Court in regard to the constitutional rights of the parties involved. This has been done on a reasonable basis by the County Board upon pedagogical considerations for the benefit of the entire school system and after evaluating administrative problems, personnel problems, transportation problems, and social adjustment problems involved in the situation.

It is well established by Rule 52(a) of the Federal Rules of Civil Procedure and by the decisions of this Court[6] that

[6] *U. S. v. National Association of Real Estate Boards*, 339 U. S. 485, 70 S. Ct. 711, 94 L. Ed. 1007 (1950 — Douglas, J.) and see other Supreme Court cases cited by Mr. Justice Douglas at page 495 of 339 U. S. 485.

the Petitioners must establish that the findings of the District Court were "clearly erroneous" in order to obtain a reversal. The careful and comprehensive Opinions of the District Court of November 23, 1956 and of June 20, 1957, the Judgment of July 3, 1957 itself and the great weight of the evidence — most of which was introduced by the Respondents and most of which is uncontradicted — show that the findings of the District Court were not clearly erroneous, but on the contrary were clearly in accord with the great weight of the evidence.

Then too, when the findings of fact of the District Court are supported by the evidence and are affirmed by the Court of Appeals, this Court should not grant certiorari to review those findings.

As Mr. Justice Jackson stated for this Court in *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U. S. 271, at 275, 69 S. Ct. 535, 93 L. Ed. 672, 677 (1949):

> "A court of law, such as this Court is, rather than a court for correction of errors in fact finding, cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error."

See also the four earlier cases of this Court cited in support of this statement at Page 275 of 336 U. S.

II.

There is No Conflict Among the Circuits

There can be no conflict among the Circuits in regard to the law applicable to segregation in the public schools. The applicable law is established by this Court in the Opinions in the *Brown* case. The application of the law to the factual situation in each case obviously varies with the

facts of each case, as this Court has indicated in the Second Opinion in the *Brown* case.

The *principles of law* in the Eighth Circuit applied in *Aaron v. Cooper*, 243 F. 2d 361 (C.A. 8 — 1957); in the Sixth Circuit in *Clemons v. Board of Education of Hillsboro*, 228 F. 2d 853; and *Booker v. Tennessee Board of Education*, 240 F. 2d 689 (C.A. — 1957) and in this case are the same; the factual situation in the cases in the Sixth Circuit were quite different. In the *Clemons* case, there was an attempt by the local school authorities in Hillsboro, Ohio, by use of a gerrymandered school district to circumvent and frustrate the law of Ohio since 1887 prohibiting segregation in the public schools of that State. The District Court, however, declined an injunction and its judgment "continued for an indefinite period the violation of law carried out by the Board of Education" (228 F. 2d at 857). The *Booker* case involved Memphis State College in which it was *anticipated that there would be an overcrowding* if all persons qualified for admission were admitted without restriction. The Board of Education provided for gradual admission of qualified negro students, but there was no limitation on white students, either non-residents of Tennessee or non-residents of Memphis. There was no building program to take care of any anticipated increase. These cases are obviously quite different from the case at bar.

The case at bar has more similarity on the facts to the case of *Aaron v. Cooper*, supra, which involved a gradual desegregation of the public schools in Little Rock, Arkansas. In Little Rock, however, the desegregation was begun in the 10th, 11th and 12th grades in the autumn of 1957, then in the 7th, 8th and 9th grades and then in the six elementary grades; the entire program to be completed by 1963. Not only are substantially all of the administrative, pedagogical

and other problems set forth in the District Court's Opinion in that case, (*Aaron v. Cooper*, 143 F. Supp. 855), present in the case at bar, but, in addition, the County Board in the present case had a predominantly rural County with transportation and other problems which were not present in the metropolitan area of Little Rock. Then too, in the present cases, the County Board's desegregation plan provided for transfers to the high schools during the interim period which was not a feature in the Little Rock plan so far as the elementary schools were concerned in the Little Rock plan during the interim period there.

The Petitioners suggest that in the several District Court cases, the problem of overcrowding had been treated not as a racial problem but as a spatial problem. The Petitioners, however, overlook the fact that *during the transfer period*, the racial and the spatial considerations are closely related in that the colored pupils already have "space" in the existing colored schools and there is not sufficient "space" during the interim period in the overcrowded white school to permit transfer from the colored to the white schools. The fact that if a few white students whose parents moved into Harford County, applied during a school year for admission to the white school in their neighborhood during the transfer period and would be admitted, as the law requires, does not indicate any racial discrimination, as the white pupil has "*no space*" to occupy, whereas the colored pupil has *his space* in the colored school. Counsel for the Petitioners have never been willing to agree on a number of applications for transfer during the interim period. It could not be assumed that the applications for transfer would necessarily be a small number.

It seems clear that there is no conflict in the Circuits and that there can be none.

CONCLUSION

The Petitioners are seeking a review of the facts in a case in which the facts were most carefully considered by the District Court and the District Court's Findings of Fact were affirmed and adopted by the Court of Appeals. The evidence shows that the Plan of Desegregation, approved in the Judgment of July 3, 1957, is equitable, reasonable, based on pedagogical and other criteria approved by this Court in the Second Opinion in the *Brown* case. The Plan is working well. All of the elementary schools will be 78% desegregated as of September, 1958, and the remaining 22% will be desegregated by September, 1959, when the building program will be completed. The high schools will be completely desegregated by 1963 with an appropriate system of transfers in individual cases during the interim period. The new Junior College in Bel Air, Maryland, has already been established on a desegregated basis. There has been no definance or attempt at circumvention of this Court's decision in the *Brown* case. The Respondents respectfully submit that no useful purpose can be served by granting a Writ of Certiorari in this case.

Respectfully submitted,

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